SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 634

KENNETH M. KEEFE AND WALLACE D. BRADFORD, APPELLANTS,

vs.

EARL L. CLARK, DRAIN COMMISSIONER OF OAKLAND COUNTY, MICHIGAN, AND BOARD OF SUPERVISORS OF OAKLAND COUNTY, CITY OF ROYAL OAK, INTERVENOR

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

INDEX.

	Original	Print
Record from Circuit Court of Oakland County, Michigan	2	1
Statement of reasons and grounds for appeal	2	1
Petition for declaratory judgment	3	2
Exhibit "1"—East Clawson Storm Sewer Drain District Bond, No. 211, $1000.00	11	7
Exhibit "2"—Excerpts from order to holders of 5½% bonds, dated November 1, 1927, issued by the East Clawson Storm Sewer Drain District, Oakland County, Michigan	13	9
Exhibit "D-1"—Special assessment roll (omitted in printing)	36a	
Exhibit "D-2"—Supplemental special assessment roll (omitted in printing)	36a	
Exhibit "E-1"—Analysis of collections by years (omitted in printing)	36b	
Exhibit "E-2"—Summary of receipts and disbursements to December 1, 1941 (omitted in printing)	36b	

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 9, 1944.

	Original	Print
Record from Circuit Court of Oakland County, Michigan—Continued		
Petition for declaratory judgment—Continued		
Exhibit "F"—Analysis of 1937, 1938, 1939 and 1940 spreads and current collections (omitted in printing)	36c	
Exhibit "G"—Analysis of special assessment roll by subdivisions (omitted in printing)	36d	
Answer to petition for declaratory judgment	37	24
Stipulation providing for amendment of the petition and answer	41	27
Opinion, Hartrick, J.	41	27
Declaratory judgment	49	33
Bill of exceptions	51	34
Appearances	51	34
Statement of Mr. Long	51	35
Statement of Mr. Merritt	56	38
Testimony of Earl L. Clark	56	39
John Robert Evans	57	39
Certificate of the Court (omitted in printing)	58	
Stipulation approving bill of exceptions (omitted in printing)	59	
Proceedings in Supreme Court of Michigan	60	40
Docket entries (omitted in printing)	60	
Minute entry of argument (omitted in printing)	61	
Opinion, Bushnell, J.	62	40
Judgment	70	47
Petition for appeal	71	48
Assignment of errors	75	51
Order of Chief Justice of Supreme Court of Michigan denying petition for appeal	78	54
Order of Associate Justice Reed allowing appeal	79	54
Citation and service (omitted in printing)	80	
Cost bond (omitted in printing)	81	
Praecipe for record (omitted in printing)	83	
Appellee's praecipe for record (omitted in printing)	87	
Plaintiff's in error statement of questions involved filed in Supreme Court of Michigan	88	55
Defendant's in error argument filed in Supreme Court of Michigan	89	56
Defendant's Exhibit "2"—Map of East Clawson Storm Sewer Drain, General plan and assessment district	91	56
Praecipe for record (omitted in printing)	92	
Clerk's certificate (omitted in printing)	94	
Statement of points to be relied upon and designation of parts of the record to be printed	95	57
Counter-designation of parts of the record to be printed	97	
Order noting probable jurisdiction	98	58

[fols. 1-2]

IN THE CIRCUIT COURT OF OAKLAND COUNTY, MICHIGAN

KENNETH M. KEEFE and WALLACE D. BRADFORD, Petitioners and Appellants,

vs.

EARL L. CLARK, Drain Commissioner of Oakland County, and Board of Supervisors of Oakland County

STATEMENT OF REASONS AND GROUNDS FOR APPEAL—Filed April 9, 1943

Petitioners herein say that the judgment heretofore entered dismissing the petition is erroneous in the following respects:

1. The court erred in holding that respondents are not obliged by Section 18, Chapter X, Act 316 Michigan Public Acts 1923, as amended by Act 331 Michigan Public Acts 1927 and Act 129 Michigan Public Acts 1939, to levy and spread, in accordance with the percentages in the original assessment roll of East Clawson Storm Sewer Drain against the governmental subdivision taxed at large therefor and against all lands in the district not owned by the United States, State of Michigan, or municipalities, and used by them for governmental purposes, an additional deficiency assessment sufficient when collected to pay all outstanding bonds of said district and interest thereon, whereas the court should have held that respondents are obliged to levy and spread such additional deficiency assessment.

2. The court erred in holding that if refunding bonds and certificates of indebtedness are issued by East Clawson Storm Sewer Drain District, the Drain Commissioner will not be empowered under Act 129 Michigan Public Acts 1939 to provide, subject to the directions of the Public Debt Commission, for additional levies of assessments prior to the maturity of such refunding bonds and certificates of indebtedness as he shall deem necessary to prevent default in payment of interest on such obligations and the maintenance of a sinking fund for their retirement, whereas the

[fol. 3] court should have held that the Commissioner will be so empowered.

3. The court erred in holding that the provisions contained in paragraph 11 of the order of the Drain Commissioner dated April 9, 1942, copy of which is attached to the petition, may not lawfully be performed, whereas he should have held that such provisions may lawfully be performed.

4. The court erred in holding that lands in the East Clawson Storm Sewer Drain District which have been transferred to private owners by the State of Michigan by deed or contract made pursuant to Act 155 Michigan Public Acts 1937 are exempt from an additional deficiency assessment to meet requirements of bonds issued by said district, whereas he should have held that such lands are not so exempt.

5. That the court erred in denying the petition.

Voorhies, Long, Ryan & McNair, Dykema, Jones & Wheat, Attorneys for Petitioners and Appellants.

IN CIRCUIT COURT OF OAKLAND COUNTY

PETITION FOR DECLARATORY JUDGMENT—Filed June 25, 1942

Kenneth M. Keefe and Wallace D. Bradford, petitioners herein, file this petition pursuant to Sections 13903 to 13909 Michigan Compiled Laws of 1929, against Earl L. Clark, Drain Commissioner of Oakland County, and Board of Supervisors of Oakland County, respondents herein, for a binding declaration of rights in the matters hereinafter set [fol. 4] forth, and respectfully show unto the Court as follows:

1. That they are the owners of thirty-two (32) bonds issued by East Clawson Storm Sewer Drain District, a drain district in Oakland County, Michigan. A copy of one of said bonds is attached hereto and marked Exhibit 1. All other bonds issued by said drain district are in the same form and tenor, except for variance of maturity dates and serial numbers. All bonds held by petitioners are in default as to principal and in default as to interest since May

1, 1939. The bonds held by petitioners bear serial numbers and maturity dates as follows:

Serial Numbers	*Maturity Dates*
71 to 80, both inclusive, and 85	May 1, 1932
121 to 130, both inclusive	May 1, 1933
137	May 1, 1935
191 to 195, both inclusive, and 211 to 215, both inclusive	May 1, 1936

2. Petitioners and holders of other bonds issued by the said drain district have long endeavored to obtain payment of their bonds, or the issuance of refunding obligations in lieu thereof, and have for several years been negotiating with respondent Drain Commissioner, his predecessors in office, and Matthew Carey, Refunding Agent, in relation to a refunding, and recently have received a communication from said Matthew Carey, a copy of which is hereto attached and marked Exhibit 2. Petitioners are informed and believe that similar communications have been sent to other holders of said bonds, and that such holders, or a substantial number thereof, have either deposited their bonds in escrow as requested in said communication or are about to [fol. 5] do so. Petitioners have deposited their bonds in escrow, and thus expressed their willingness to settle interest claims as proposed, and to accept refunding bonds.

3. Petitioners are informed and believe that the matters recited on pages 1 and 2 of the Drain Commissioner's order dated April 9, 1942, and in the three tabulations made parts of said communication, entitled "Analysis of 1937, 1938, 1939 and 1940 Spreads and Current Collections East Clawson Storm Sewer Drain District," "Exhibit E-1 (Revised) Analysis of Collections by Years, Exhibit E-2, Summary of Receipts and Disbursements to December 31, 1941," and "Exhibit G—East Clawson Storm Sewer Drain District, Oakland County, Michigan—Analysis of Special Assessment Roll by Subdivision," all of which appear in the said communication, Exhibit 2; are substantially correct. Petitioners have requested respondent Drain Commissioner to proceed to issue refunding bonds, but he refuses so to do, and petitioner is advised that in this respondent Board of Supervisors supports him, because it is his opinion that so many parcels of land in the drain district have become exempt from the levy of additional or deficiency drain assess-

ments that sufficient moneys could not be obtained from the district to service the said refunding bonds. Petitioners, however, insist that holders of the existing bonds are entitled by Section 18, Ch. X, Act 316 Michigan Public Acts 1923, as amended by Act 331 Michigan Public Acts 1927 and Act 129 Michigan Public Acts 1939, to an additional deficiency levy or levies of amounts sufficient to pay the debt of said drain district, against the political subdivisions taxed at large and against all lands in the district included in the original assessment rolls, except such as are now owned by the State of Michigan, United States of America, [fol. 6] or municipal corporations, and used by them for governmental purposes. With taxes available from such sources, petitioners are advised and believe that the proposed refunding bonds and certificates of indebtedness can be adequately serviced and paid.

4. An actual controversy therefore, exists between petitioners and other bondholders on the one hand, and respondents on the other, upon the following questions:

(a) Are respondents obliged to levy an additional deficiency assessment pursuant to Section 18, Ch. X, Act 316 Michigan Public Acts of 1923, as amended by Act 331 Michigan Public Acts 1927 and Act 129 Michigan Public Acts 1939, to pay the outstanding bonds and interest accrued thereon against the political subdivisions taxed at large, and against all lands in the district included in the original assessment roll, except such as are owned by the State of Michigan, United States of America, or municipal corporations, and used by them for governmental purposes?

(b) If refunding bonds are issued as contemplated in the Commissioner's order, can additional deficiency assessments be made periodically as contemplated in paragraph 11 of the Commissioner's order against the said municipalities and against those lands in the district which at the time of the making of such additional deficiency assessments are not owned by the State of Michigan, United States of America, or municipal corporations, and used by them for governmental purposes?

(c) When title to a parcel of land in the district against which an assessment for the drain was orig-

[fol. 7] inally levied passes to the State under a sale for delinquent taxes, and the State Land Office Board by quit claim deed or agreement transfers said parcel of land to a private owner, pursuant to Act 155 Michigan Public Acts 1939, as amended, so that the same is returned to the tax rolls for state and municipal taxes, is such parcel of land subject to an additional deficiency levy of taxes for the purpose of paying the debt of the drain district evidenced by its outstanding bonds?

5. Petitioners are advised and believe that said questions must under the law of this State, interpreted to conform with various provisions of the Constitution of the United States and State of Michigan hereinafter set forth, be answered in the affirmative. Petitioners allege that Section 18, Ch. X, Act 316 Michigan Public Acts 1923, as amended by Act 331 Michigan Public Acts 1927 and Act 129 Michigan Public Acts 1939, provided for additional deficiency assessments after the bonds of said drain districts had all matured, to be levied in accordance with the percentages fixed in the original assessment rolls against every parcel of land in the drain district, except those which at the time of the additional levy are exempt by reason of an actual ownership by the State of Michigan, United States of America, or municipal corporations, (and used by them for governmental purposes,) and that nothing contained in Act 155 Michigan Public Acts of 1937, as amended, or any other statutes in pari materia, abrogated or curtailed such provision, or could as against petitioners or other holders of bonds of said district abrogate or curtail the same, and that any interpretation of same in the manner contended by respondents would violate Article I, Section 10, and [fol. 8] Amendment XIV, Section 1, of the Constitution of the United States, Article II, Sections 10 and 16, and Article X, Section 9, of the Constitution of the State of Michigan.

6. Petitioners are informed that respondents herein contend that said questions must be answered in the negative, their precise reasons therefor being unknown. There is thus presented an actual controversy between the parties upon points vitally material to petitioners and other holders of said bonds, which necessarily must be decided before further action toward the refunding of said bonds can be taken. Petitioners and other holders of said bonds must suffer a

loss of a substantial part of the security for the payment of their bonds if their contention in respect to the said questions is not upheld, for they are informed by respondents, and believe, that such information is substantially correct, that title to lands which bear approximately 45% of the original assessment for said drain has passed to the State because of tax delinquency, and that a large part of said lands have been transferred by the State Land Office Board by quit claim deeds or contracts under Act 155 Public Acts of 1939, as amended, and are now subject to ordinary state, county and municipal taxes. If such lands are to be exempt from additional deficiency taxes the burden of the debt will be thrown upon the remaining land and the governmental subdivisions taxed at large, and this burden may be beyond the capacity of such other lands and such governmental subdivisions to fully discharge.

7. Wherefore, petitioners pray that the Court, by virtue of the powers conferred by Sections 13903 to 13909 Michigan Compiled Laws 1929, enter a judgment making a binding declaration of rights as follows:

[fol. 9] I. That respondents are now obliged by Section 18, Ch. X, Act 316 Michigan Public Acts 1923, as amended by Act 331 Michigan Public Acts 1927 and Act 129 Michigan Public Acts 1939, to levy and spread, in accordance with the percentages in the original assessment roll for said drain against the governmental subdivisions taxed at large therefor and against all lands in the district not owned by the United States, State of Michigan or municipalities, and used by them for governmental purposes, an additional deficiency assessment sufficient when collected to pay all outstanding bonds of said district and interest thereon.

II. That if refunding bonds and certificates of indebtedness are issued, the Drain Commissioner, pursuant to Act 129 Michigan Public Acts 1939, shall provide, subject to the directions of the Public Debt Commission, for such additional levies of assessments prior to the maturity of such refunding bonds and certificates of indebtedness as he shall deem necessary to prevent default in payment of interest on such obligations, and the maintenance of a sinking fund for their retirement, such additional assessments to be made in accordance with the percentages in the original assessment roll against the governmental subdivisions taxed

at large for said drain, and all lands in the district which at the time of such levies are not owned by the United States, the State of Michigan and municipalities, and used by them for governmental purposes.

III. That the provision contained in paragraph 11 of the order of the Drain Commissioner, dated April 9, 1942, if approved by the Michigan Public Debt Commission, may lawfully be performed.

IV. That no lands in said district shall be excluded from any additional deficiency assessment roll, by reason of the [fol. 10] fact that the State had acquired title thereto and subsequently has transferred the same to private owners by deed or contract made pursuant to Act 115 Michigan Public Acts 1937, as amended.

Kenneth M. Keefe, Wallace D. Bradford, Petitioners, by Irvin Long, Their Attorney.

* * * * * * *

[fol. 11] EXHIBIT 1 TO PETITION

United States of America

Number		Dollars
211	State of Michigan	1000

County of Oakland

East Clawson Storm Sewer Drain District Bond

Know All Men By These Presents, that the East Clawson Storm Sewer Drain District of the County of Oakland, State of Michigan, is justly indebted and, for value received, hereby promises to pay to the bearer hereof the sum of One Thousand Dollars lawful money of the United States of America, on the first day of May, 1936, with interest thereon at the rate of 5½% per annum, payable semi-annually on May 1 and November 1 of each year on presentation and surrender of the annexed interest coupons as they severally become due. Both principal and interest of this bond are payable at the National Bank of Commerce, Detroit, Mich.

This bond is one of a series of three hundred bonds of like date and tenor, except as to date of maturity, aggregating the sum of $300,000.00 issued under authority of and in full compliance with the provisions of Act No. 316 of the Public Acts of Michigan, 1923, as amended by Act No. 365

of the Public Acts of Michigan, 1925 and Act No. 331 of the Public Acts of Michigan, 1927.

The principal and interest of this bond are payable out of the installments of drain taxes assessed against the lands in the said district and against the County of Oakland, the Village of Clawson and the Townships of Royal [fol. 12] Oak and Troy at large, in proportion to their respective taxation for such improvement as follows: lands in District 77.5%, Oakland County 3.5%, Troy Township 2.5%, Royal Oak Township 6.5%, Village of Clawson 10%, and are issued for the payment of the cost of construction of the East Clawson Storm Sewer Drain in the Townships of Royal Oak and Troy in said Oakland County, under and in pursuance of the statutes aforesaid and by lawful authority, and the amount of said issue does not exceed the aggregate of the installments of such drain taxes levied, and in case the amount available in the drain fund for said drain shall be insufficient to pay the principal or interest of any of said bonds when they become due the same shall be advanced and paid by the County of Oakland out of its general funds and reimbursement to said general fund shall be made out of the drain taxes thereafter collected, provided that such advancement by the County shall not cause the total debt of the County to exceed the constitutional limitation thereof.

It is hereby certified and recited that all acts, conditions and things required to be done, precedent to and in the issuance of this bond, in order to make it a binding obligation of the East Clawson Storm Sewer Drain District, have been done, have happened and have been performed in due form and time as required by law, and for the prompt payment hereof and of the interest hereon the full faith, credit and resources of said Drain District are hereby irrevocably pledged.

In Witness Whereof, the Drain Commissioner of the County of Oakland for and on behalf of said East Clawson Storm Sewer Drain District has caused this bond to be signed by the County Drain Commissioner and counter- [fol. 13] signed by the County Clerk of said County of Oakland as of the first day of November, A. D., 1927.

A. W. Spencer, Drain Commissioner, Oakland County, Michigan.

Countersigned: B. P. Dougherty, County Clerk, Oakland County, Michigan.

Exhibit 2 to Petition

To Holders of—

5½% Bonds, dated November 1, 1927, issued by the

East Clawson Storm Sewer Drain District
Oakland County, Michigan

There are attached hereto

Order (made April 9, 1942) of the County Drain Commissioner
Exhibit D—Special Assessment Roll
Exhibit E—Analysis of Receipts and Disbursements
Exhibit F—Analysis of Current Collections by Municipalities
Exhibit G—Analysis of Special Assessment Roll by Subdivisions

Paragraph 16 of this Order provides that its escrow provisions (paragraphs 16 to 22, inclusive) shall become effective when bonds in the aggregate principal amount of [fol. 14] $168,000 (75.3%) shall have been deposited with the Escrow Agent. These provisions involve application of available funds to discharge of interest from May 1, 1937, on the following basis:

To May 1, 1939 2 years		
101 bonds @ 1½% or	$30.00	$3,030.00
Nov. 1, 1939 ½ year		
199 bonds @ 2% or	10.00	1,990.00
Nov. 1, 1940 1 year		
201 bonds @ 2% or	20.00	4,020.00
May 1, 1942 1½ years		
223 bonds @ 2% or	30.00	6,690.00
		15,730.00
Reserve equal to 11-1-42 and 5-1-43 coupons—223 bonds @ $25.00		5,575.00

and thereafter to discharge (in chronological order) unpaid coupons and accrued interest from May 1, 1931, at 2.75% rate (50% of face). Note that funds will be exhausted by application to bonds actually on deposit, although, as additional bonds may be subsequently deposited,

they will be placed on a parity with deposited bonds as rapidly as accumulation of funds permits.

Provision is made for certain expense charges (limited to 4% of the principal amount) applicable to all bonds deposited and the manner of terminating the escrow arrangement if the bonds cannot be refunded by January 1, 1944.

Paragraph 15 sets forth the legal conditions that must be satisfied before refunding obligations may be issued under the provisions of paragraphs 1 to 14, inclusive. If and when issued, the refunding obligations will be as follows:

[fol. 15] 30-year callable Refunding Bonds, dated as of May 1, 1937, with interest (payable semi-annually) at

1.5% for 2 years	3.0% for 5 years
2.0% for 3 years	3.5% for 5 years
2.5% for 5 years	4.0% for 10 years

10-year non-interest bearing Certificate of Indebtedness, dated as of May 1, 1942 (to be tendered to the District at 50% of their face value).

Deficiency assessments (of not to exceed 5% of the original assessments) to be levied annually from 1947 to 1965 and in such amounts as needed to retire the refunding obligations in 1966.

Comments

Refunding negotiations have been carried on with representatives of holders of a substantial proportion of the outstanding bonds since 1940. While a Refunding Plan was being put into shape for formal submission to all parties involved, the Supreme Court of the State of Michigan handed down (June 30, 1941) an opinion in the case of Municipal Investors Association vs. the City of Birmingham, 298 Mich. 314, in which the court held that certain amendments to the general tax laws made in 1937 and 1939 and the enactment of the so-called Scavenger Sale Act, as applied to a special assessment district in said city, barred the levying of deficiency assessments against property acquired by the State of Michigan at recent tax sales, even though it was subsequently sold to private owners. Inasmuch as a substantial deficiency assessment will be necessary in order to pay the principal and interest on

the outstanding bonds of this drain district (or any new bonds issued for the purpose of refunding said outstanding bonds), it has been mutually agreed that no refunding [fol. 16] should be attempted pending the appeal of the Birmingham case to the U. S. Supreme Court. The county officials feel that, if the decision of the State Court is sustained, then, there will have to be a radical modification in the proposed refunding plan.

Method of Acceptance

Holders of a large majority of the bonds have already indicated their intention of depositing their bonds under the Order.

If it is acceptable to you, please forward your bonds to the Escrow Agent—Detroit Trust Company, Detroit, Michigan—accompanied by two copies of the Letter of Transmittal. A transferable Escrow Certificate will be issued to you by the Escrow Agent. As funds become available, payments will be made to registered holders of Escrow Certificates.

Inquiries should be addressed to Matthew Carey, Refunding Agent, 2406 Union Guardian Bldg., Detroit, Michigan.

April 15, 1942.

* * * * * * *

[fol. 17] Submit in Duplicate with Bonds

(Drain Commission Order for Refunding Bonds)

Order made this 9th day of April, 1942, by Earl L. Clark, County Drain Commissioner of the County of Oakland, State of Michigan.

Witnesseth:

Whereas, the East Clawson Storm Sewer Drain District, in Oakland County, Michigan, (hereinafter called the "Drain District"), pursuant to the provisions of Act No. 316 of the Public Acts of Michigan for 1923, as amended, (hereinafter called the "Drain Act"), and in anticipation of the collection of the special assessments hereinafter [fol. 18] referred to, issued bonds in the aggregate principal sum of $300,000, dated November 1, 1927, payable serially as follows: $20,000 on May 1 of each year from 1929 to 1930, both inclusive, $30,000 on May 1 of each

year from 1931 to 1936, both inclusive, and $40,000 on May 1 of each year from 1937 to 1938, both inclusive, and bearing interest at the rate of 5½% per annum, of which there remain outstanding the following bonds aggregating the principal sum of $223,000, to-wit:

. . . . . .

[fol. 19] together with interest from May 1, 1937 to date on all of said outstanding bonds at 5½% per annum except as hereinatter indicated; and

. . . . . .

Whereas, the aforesaid bonds were issued in anticipation of the collection of assessments made pursuant to said Drain Act to defray the cost of the construction of a drain in said district, which assessments originally were in the aggregate principal sum of $30,000.00 (plus overrun), divided into ten annual instalments, to be spread upon the tax rolls in the years 1928 to 1937, both inclusive; and

Whereas, the said Drain District did not spread upon the tax rolls of the years 1932 to 1937, both inclusive, the installments of the said assessments which should have been spread in those years and also did not spread upon [fol. 20] the tax rolls of those years the interest upon the unpaid balance of said assessments for the twelve (12) months' period ending December 1 of each such year; and

Whereas, pursuant to an order of the County Drain Commissioner and in anticipation of the refunding of the outstanding bonds of the East Clawson Storm Sewer Drain District under the provisions of Act No. 13 of the Public Acts of 1932, First Extra Session, a supplemental special assessment roll was adopted in the year 1937 by virtue of which, first, annual installments Nos. 5 to 10, both inclusive, of said original assessment roll, due in the year 1932 to 1937, both inclusive, aggregating the principal sum of $180,140.00, were divided into twenty-five equal annual instalments of $7,205.60 each, the first instalment to be spread upon the tax roll of the year 1937 and one annual instalment on the tax roll of each year thereafter until 1961, inclusive; and, second, the amount of interest accrued upon the principal of said instalments Nos. 5 to 10, both inclusive, from December 1, 1931 to May 1, 1937, at 6%

per annum, aggregating $58,545.50, was divided into ten annual instalments of $5,854.55 each, the first instalment to be spread upon the tax roll of the year 1937 and one annual instalment to be spread upon the tax roll of each year thereafter until 1946, inclusive; and

Whereas, in each of the years from 1937 to 1941, both inclusive there was spread upon the tax rolls of such year, the annual instalment of said supplemental special assessment roll maturing in such year, plus current interest upon all outstanding instalments at 6% per annum as provided in said Drain Act; and

[fol. 21] Whereas, a refunding of the outstanding bonds issued by said Drain District is necessary because of defaults in the payment of principal and interest on said bonds, which defaults exist and have existed for some years owing to the non-payment of a large amount of the assessments for the construction of said East Clawson Storm Sewer Drain, heretofore spread upon the tax rolls, and because of the cancellation under the provisions of the general tax laws of the State of Michigan and Act No. 155 of the Public Acts of 1937, as amended, of not only the delinquent instalments of such assessments but also of the instalments to be spread upon the tax rolls in future years; and

Whereas, the financial condition of said Drain District warrants as a matter of sound municipal financing, the refunding of the principal of said outstanding bonds and the refunding of the unpaid interest accrued thereon to May 1, 1937, all as hereinafter provided; and

Whereas, the additional levies required in this order are deemed necessary to prevent default in the payment of interest on the refunding bonds herein proposed to be issued and for the maintenance of a sinking fund for the retirement of said refunding bonds and the certificates of indebtedness hereinafter authorized;

Therefore, it is hereby ordered, as follows:

1. That subject to the conditions set forth in paragraph 15 of this order and subject to the approval of the Public Debt Commission, the principal of the above described outstanding bonds of said East Clawson Storm Sewer Drain District, aggregating the principal sum of $223,000, shall be refunded into a like amount of refunding bonds to be known

as "East Clawson Storm Sewer Drain District Refunding Bonds," which refunding bonds shall be numbered consecu-
[fol. 22] tively from 1 to 223, both inclusive, shall be in the denomination of $1,000 each, shall be dated as of May 1, 1937, shall mature May 1, 1967, shall bear interest at the rate of 1½% per annum from May 1, 1937 to May 1, 1939, at the rate of 2% per annum from May 1, 1939 to May 1, 1942, at the rate of 2½% per annum from May 1, 1942 to May 1, 1947, at the rate of 3% per annum from May 1, 1947 to May 1, 1952, at the rate of 3½% per annum from May 1, 1952 to May 1, 1957, and at the rate of 4% per annum thereafter until paid, said interest to be payable semi-annually on May 1 and November 1 of each year. Each of said refunding bonds shall have proper interest coupons attached thereto evidencing interest thereon to date of maturity from May 1, 1937 or such subsequent date as to which interest shall have been discharged on the principal amount refunded, by payments heretofore made as above set forth or by payments hereafter made in accordance with this order. The principal of said refunding bonds and interest thereon, shall be payable in lawful money of the United States of America at the Detroit Trust Company, in the City of Detroit, Michigan, or at its successor paying agent named by the County Drain Commissioner of Oakland County, which shall be a responsible bank or trust company in the City of Detroit, Michigan.

2. Said refunding bonds shall be subject to redemption from time to time prior to maturity on any interest payment date at par plus accrued interest, provided notice is given to the holders of bonds to be redeemed, by publication of such notice not less than thirty (30) days prior to the redemption date at least once in a newspaper or publication circulated in the City of Detroit, Michigan, which carries as a part of its regular service notices of the sale of munici-
[fol. 23] pal bonds. Refunding bonds so called for redemption shall not bear interest after the redemption date specified in such notice, provided funds are on hand with the paying agent to redeem the same. Refunding bonds shall be selected for redemption by lot by the then paying agent from all the outstanding bonds of said issue.

3. That subject to the conditions set forth in paragraph 15 of this order and subject to the approval of the Public Debt Commission, the said unpaid interest accrued to May

1, 1937, amounting to $33,400.00; less any amounts hereafter discharged, shall be refunded by the issuance of certificates of indebtedness to be known as "East Clawson Storm Sewer Drain District Certificates of Indebtedness," to be dated as of May 1, 1942, to mature May 1, 1952, and to be non-interest bearing prior to maturity but thereafter to bear interest at the rate of 3% per annum until paid. The principal of said certificates of indebtedness and the interest thereon, if any, shall be payable in lawful money of the United States of America at the Detroit Trust Company, in the City of Detroit, Michigan, or at its successor paying agent named by the County Drain Commissioner of Oakland County, which shall be a responsible bank or trust company in the City of Detroit, Michigan. One such certificate of indebtedness shall be issued for the interest to be redeemed on each outstanding bond, provided, however, that when one person holds more than one such bond, then one or more certificates of indebtedness may be issued for the interest to be refunded thereon, in such denomination or denominations not exceeding $1,000 as may be agreed upon between such holder and the County Drain Commissioner of the County of Oakland; and provided further that in any case [fol. 24] certificates of indebtedness shall be issued in such denominations as may be necessary to carry out the provisions of paragraph 20 of this order.

4. Said certificates of indebtedness shall be subject to redemption from time to time prior to maturity on May 1 and November 1 of each year at par. Certificates of indebtedness shall be selected for redemption by lot by the then paying agent from all the outstanding certificates of indebtedness of said issue. Notice of such redemption shall be published not less than thirty (30) days prior to the redemption date at least once in a newspaper or publication circulated in the City of Detroit, Michigan, which carries as a part of its regular service, notices of the sale of municipal bonds.

5. Said refunding bonds and certificates of indebtedness shall be continuations of the obligations refunded thereby as provided in subdivision (e) of Section 4 of Act No. 13 of the Public Acts of Michigan, First Extra Session of 1932, as amended by Act No. 128 of the Public Acts of Michigan, 1939.

6. Said refunding bonds and attached coupons and said certificates of indebtedness shall be in such form as shall be approved by the attorneys approving the validity thereof.

7. Said refunding bonds and certificates of indebtedness shall be exchanged for the obligations to be refunded thereby on a par basis.

8. When the first fourteen paragraphs of this order shall become effective, there shall be established and thereafter maintained a fund to be known as the "East Clawson Storm Sewer Drain Interest and Sinking Fund" into which shall be placed all money then in or belonging to the "East Clawson Storm Sewer Drain Redemption Fund" all collections [fol. 25] thereafter made of existing East Clawson Storm Sewer Drain taxes or assessments (including future due installments) and of any taxes or assessments thereafter levied for the payment of the said outstanding obligations of said East Clawson Storm Sewer Drain District or for the payment of any obligations which may be issued for the purpose of refunding those now outstanding; and any other moneys allocable to the payment of the outstanding or refunding obligations of said Drain District, including any moneys received under the provisions of Act No. 155 of the Public Acts of 1937, as amended.

9. Said "East Clawson Storm Sewer Drain Interest and Sinking Fund" shall be used for the following purposes, to-wit:

(1st) For the payment of any unpaid fees and expenses specified in subparagraphs (1) and (2) of paragraph 17 of this order;

(2nd) To pay any expenses in connection with the issuance of said refunding bonds and certificates of indebtedness;

(3rd) To pay interest on said refunding bonds as the same accrues;

(4th) To retire refunding bonds and certificates of indebtedness as hereinafter provided.

10. The supplemental special assessment roll hereinbefore referred to, made by the County Drain Commissioner of the County of Oakland, in the year 1937, by which unspread instalments Nos. 5 to 10, both inclusive, of the origi-

nal assessment roll for the construction of said East Clawson Storm Sewer Drain, were divided into twenty-five annual instalments to be spread in the year 1937 and subse-
[fol. 26] quent years and by which the unspread interest on outstanding assessments was divided into ten annual instalments to be spread in the year 1937 and subsequent years, is hereby ratified and confirmed, both as to the instalments which have been already spread upon the tax rolls and the instalments which are to be spread upon such rolls in the future, and it is hereby ordered that instalment No. 6 of said supplemental special assessment roll shall be spread upon the tax rolls of the year 1942 and in numerical order one of the remaining instalments shall be spread upon the tax roll of each year thereafter.

11. An annual accounting shall be made on August 1 of each year, commencing with the year 1947, of the amount of outstanding bonds and certificates, if any, and of the amount in said "East Clawson Storm Sewer Drain Interest and Sinking Fund." Beginning with the year 1947 there shall be levied upon the tax roll of each year an amount sufficient to pay the interest maturing during the next calendar year and in addition thereto an amount equal to the principal of the refunding bonds and certificates of indebtedness (if any) outstanding on August 1 of such year of levy, divided by the number of years remaining between May 1 of such year and May 1, 1967 (the dividing figure being 20 for the year 1947 and one less for each subsequent year). If the amount of the instalment of the 1937 supplemental special assessment roll to be spread upon the tax roll of any such year (exclusive of any part thereof cancelled by the terms of Act No. 155 of the Public Acts of 1937, as amended, and similar provisions of the general tax laws), shall not be equal to the amount to be levied under the requirements of the foregoing sentence, then any such difference shall be levied under the provisions of Act No. 129 of the Public Acts
[fol. 27] of 1939, against the various political subdivisions and parcels of land in the special assessment district, in proportions as originally assessed; provided that the additional levies herein required to be made under the provisions of Act No. 129 of the Public Acts of 1939 against each such political subdivision or parcel of land, shall not in any year prior to the year 1965 exceed 5% of the original assessment against the same. In determining the total amount to be levied each year, there shall be deducted any moneys

in the interest and sinking fund available for the retirement of the refunding bonds and certificates of indebtedness.

12. If, between May 1 and October 31 of any year, there shall be an amount in the "East Clawson Storm Sewer Drain Interest and Sinking Fund" in excess of the succeeding November 1 and May 1 interest requirements on all outstanding refunding bonds and if, between November 1 of any year and April 30 of the following year, there shall be an amount in said fund (exclusive of collections made upon current taxes becoming due during such period) in excess of the succeeding May 1 interest requirements on said refunding bonds, all prior interest requirements having been met or provided for, the County Drain Commissioner shall advertise for tenders of refunding bonds and certificates of indebtedness (if any) as provided in Section 8 of Act 13, Public Acts of 1932, First Extra Session, as amended, and if tenders are received at or below par and accrued interest, he shall purchase bonds and/or certificates of indebtedness so tendered, at the lowest price or prices (taking into consideration the interest factor to May 1, 1952) to the amount of such excess; provided that the County Drain Commissioner shall not be required to so [fol. 28] advertise for tenders if the amount of such excess is less than $10,000.00. If sufficient tenders are not received to consume the moneys available therefor, then the County Drain Commissioner shall call refunding bonds for redemption at the earliest possible date to the amount so available, provided that he shall not be required to so call refunding bonds for redemption in smaller amounts than $10,000.00. Bonds shall be selected for redemption by lot by the then paying agent from all bonds of said issue then outstanding. The foregoing provisions of this paragraph in respect to advertising for tenders of the refunding bonds and certificates of indebtedness and in respect to the calling of refunding bonds for redemption, shall be subject to the requirement that if certificates of indebtedness of a par value in excess of $6,000.00 shall be outstanding on May 1, 1949, then there shall be set aside from said interest and sinking fund after the aforesaid provisions shall have been made for interest, an amount equal to such excess, and if certificates of indebtedness of a par value in excess of $3,000.00 shall be outstanding on May 1, 1950, then there shall be set aside from said interest and sinking fund after the aforesaid provisions shall have been made for interest, a sum equal to such excess, and if there shall be any cer-

tificates of indebtedness outstanding on May 1, 1951, then there shall be set aside from said interest and sinking fund after the aforesaid provisions have been made for interest, and amount sufficient to retire said certificates of indebtedness on May 1, 1952. The moneys so set aside for the retirement of certificates of indebtedness shall be used for the retirement of same upon tenders or if sufficient tenders shall not be received, then for the redemption of such certificates of indebtedness at par.

[fol. 29] 13. The County Drain Commissioner of Oakland County, Michigan, and the County Clerk of said county, shall sign and countersign, respectively, said refunding bonds and certificates of indebtedness for and on behalf of said East Clawson-Storm Sewer Drain District, and shall cause the interest coupons annexed to said bonds to be executed with their facsimile signatures; and upon the execution of said bonds and certificates, the same shall be delivered by the County Drain Commissioner to the Detroit Trust Company for exchange for the obligations to be refunded thereby.

14. At the time of the exchange of the refunding obligations herein authorized, for the obligations refunded thereby, the district shall furnish the opinion of Miller, Canfield, Paddock and Stone approving the validity of said refunding obligations.

15. Paragraphs 1 to 9 and 11 to 14, all inclusive, of this order shall not become effective until there has been established by decision of the Supreme Court of the State of Michigan or the Supreme Court of the United States, the principle that additional assessments such as those authorized under Act No. 129, Public Acts, 1939, can be legally levied against properties sold by the state under Act No. 155, Public Acts, 1937, as amended, where the original assessment roll pre-dates the acquisition by the state of the absolute title under the Michigan tax laws. Whenever either the Corporation Counsel of the County of Oakland or persons holding a majority in amount of the bonds deposited with the escrow agent as hereinafter provided, shall deem said principle to have been established as above provided and shall have evidenced his or their opinion in writing filed with the escrow agent, then the latter shall immediately thereafter mail copies of such opinion to each person whose

[fol. 30] bonds are on deposit with it and to the Drain Commissioner of the County of Oakland and to the Corporation Counsel of the County of Oakland. Unless the correctness of such opinion of the Corporation Counsel or of the bondholders shall be questioned in a court of proper jurisdiction within twenty (20) days after the mailing of such notice, the escrow agent shall have authority to proceed to accomplish the aforesaid refunding as to the bonds deposited in escrow with it.

16. Pending the establishment of the principle set forth in the foregoing paragraph, the outstanding bonds and unpaid interest coupons pertaining thereto shall be deposited with the Detroit Trust Company as escrow agent under the terms of this order. The fees and expenses of said escrow agent in the performance of its duties as set forth in this order shall be paid by the Drain District. The escrow provisions of this order shall become effective when there shall have been deposited with said escrow agent, bonds of said East Clawson Storm Sewer Drain District aggregating in principal amount the sum of $168,000.00 together with all unpaid interest coupons pertaining thereto, and if bonds in such amount shall not have been deposited on or before ninety (90) days from the date of this order, then the bonds so deposited shall be returned by the escrow agent to their respective holders and this order shall become null and void except as to the payment of any fees and expenses already incurred thereunder. The escrow agent may accept bonds without unpaid coupons where such unpaid coupons have been lost, upon approval of the County Drain Commissioner. Where bonds and coupons are held by state agencies and insurance companies, the escrow agent may in lieu [fol. 31] of the actual deposit of such bonds and coupons, accept agreements subjecting the same to the terms of this order, and in such case the bonds and coupons shall be deemed to have been deposited.

17. Pending the establishment of the principle set forth in paragraph 15 of this order, all money now on hand and hereafter acquired in the East Clawson Storm Sewer Drain Redemption Fund shall be used for the following purposes:

(1st) To pay expenses incurred by the Drain Commissioner in connection with the consummation of the provisions of this order, as the same shall from time to time accrue;

(2nd) To pay the fees and expenses of the escrow agent as the same shall from time to time accrue;

(3rd) To discharge interest from May 1, 1937 to November 1, 1941 upon such of the outstanding bonds of said Drain District as shall be escrowed, as herein provided, by the payment of the sum of $7.50 in full discharge of the interest accruing for each semi-annual period from May 1, 1937 to May 1, 1939, and the sum of $10.00 in full discharge of the interest accruing for each semi-annual period from May 1, 1939 to November 1, 1941, upon each $1,000 bond;

(4th) To discharge interest accruing during each semi-annual period subsequent to November 1, 1941 upon such bonds as shall be deposited in escrow as herein provided, by the payment of a sum equal to the interest hereinbefore provided to be paid during such period upon refunding bonds had the same been issued prior to such period, said payments to be in full satis- [fol. 32] faction of the interest accruing during such semi-annual period upon the escrowed bonds and shall be made on May 1 and November 1 of each year;

(5th) To discharge the interest accrued from May 1, 1931 to May 1, 1937 upon each bond which shall be deposited in escrow hereunder, by the payment of $13.75 upon each $1,000 bond for each semi-annual period subsequent to May 1, 1931. The interest for each such semi-annual period upon all bonds deposited in escrow as herein provided shall be satisfied in chronological order as rapidly as funds accumulate sufficient therefor, so that all unpaid interest upon bonds so deposited, for the first semi-annual period after May 1, 1931, shall be satisfied before any unpaid interest shall be satisfied upon any bonds for the second semi-annual period and the same rule shall prevail as to each semi-annual period thereafter. As additional bonds are subsequently deposited with the escrow agent, funds thereafter becoming available for the discharge of interest accrued to May 1, 1937, shall be used first to place such subsequently deposited bonds in the same status as bonds already on deposit in respect to such interest payments. Provided that no moneys shall be used for the payment of interest under this paragraph until

there shall have been first set aside by the escrow agent a sufficient amount to pay the interest due under subdivision "(4th)" above, on the following two semi-annual interest payment dates.

When any semi-annual interest has been discharged as aforesaid, if such interest is evidenced by an interest coupon, then the same shall be surrendered and cancelled but if [fol. 33] such interest is for a period subsequent to the maturity date of the bond, then substantially the following endorsement shall be placed upon each bond upon which interest shall be so paid:

By payment made this day, interest on the within bond from ——— to ——— has been fully satisfied.
——— ———, by ——— ———, Escrow Agent under Order of ——
of County Drain Commissioner,
Dated ———.

18. The district shall deposit with the escrow agent the sum of $16,636.78 on hand on December 31, 1941 plus any additional moneys subsequently received, (less any amount to be retained for the fees and expenses mentioned in subdivisions 1 and 2 of paragraph 17), within ten (10) days after there shall have been deposited with the escrow agent bonds of the East Clawson Storm Sewer Drain District, aggregating the principal sum of $168,000.00, together with all interest coupons pertaining thereto, and on or before the tenth of each month thereafter beginning with the month of April, 1942, said Drain District shall deposit such moneys as shall have become available during the preceding month (less any additional amounts necessary for such fees and expenses) to be used in the discharge of interest as hereinbefore provided, with instructions to said escrow agent to discharge such interest as provided in paragraph 17 of this order.

[fol. 34] 19. Said escrow agent shall disburse the moneys so deposited with it in settlement of interest as provided in paragraph 17 of this order, provided that there shall be deducted from moneys paid in discharge of interest heretofore or hereafter accrued on each bond, an amount equal to 50% of such payments until the amount so deducted shall equal the sum of $40.00 upon each bond, which amount so deducted shall be paid to the Bondholders' Com-

mittee—Storm Sewer Drain Districts in Michigan, presently composed of Kenneth M. Keefe, E. E. Quantrell and P. C. Wilmerding, to cover fees and expenses (whether heretofore or hereafter incurred) of said committee in respect to the bonds of said Drain District; provided, however, that as to those bonds so deposited in escrow which have paid to said committee an amount equal to $40.00 per bond, there shall be no such deduction. The fees and expenses above referred to shall, among others, comprise those incurred in connection with the formulation of this order and the servicing thereof, including counsel fees in connection with litigation to establish the principle referred to in paragraph 15 above. Said committee shall agree to file with the escrow agent annually on or before December 1st of each year, a statement of their receipts and disbursements for the year ending on October 31st preceding, in respect to the East Clawson Storm Sewer Drain District bonds. Nothing herein contained shall require said escrow agent to account to depositing bondholders for money deposited with it until such moneys shall be sufficient to discharge interest for a semi-annual period.

20. Upon the happening of the conditions specified in paragraph 15 of this order, the County Drain Commissioner shall file application with the Michigan Public Debt [fol. 35] Commission for the approval of the refunding plan set forth in this order and shall take all necessary steps to promptly effect the refunding of the outstanding indebtedness in accordance with this order and when the bonds and certificates of indebtedness shall have been executed, the same shall be deposited with the said escrow agent who shall then exchange said refunding bonds and certificates of indebtedness for the respective outstanding obligations to be refunded thereby. The escrow agent shall return the bonds to the persons entitled thereto as shown on its books, but shall retain the certificates of indebtedness, if any, and from time to time shall tender the same at an amount equal to 50% of their face value. Certificates of indebtedness shall be made in such denominations so as to effect a pro rata tender from time to time as to all certificates of indebtedness held by the escrow agent.

21. If the principle set forth in paragraph 15 of this order shall not be established prior to January 1, 1944, then

the escrow agent shall notify the persons who have deposited bonds in escrow with it and unless other directions acceptable to the escrow agent are given within sixty (60) days thereafter, the escrow agent shall return the bonds and attached coupons, if any, to the several persons entitled thereto and in such case the escrow agent shall return to the County Treasurer any undisbursed moneys deposited with it for distribution.

22. Any person depositing bonds and coupons in escrow under the terms of this order, may thereafter sell the same including any portion of the interest accrued between the bond maturity date and May 1, 1937, for use in the payment of assessments against said Drain District, if the [fol. 36] acceptance of the same in payment of such assessments is permitted under resolution of the Board of Supervisors of Oakland County. In event of such sale the depositor shall instruct the escrow agent to deliver the obligations so sold to the Treasurer of the County of Oakland, to be used solely as a credit for the payment of the assessments against said Drain District. The price for which any securities are so sold shall be paid to the escrow agent who shall deduct any moneys due to said Bondholders' Committee and shall remit the balance to the depositor.

Earl L. Clark, (Signed) County Drain Commissioner, Oakland County, Michigan.

[fol. 37] IN CIRCUIT COURT OF OAKLAND COUNTY

ANSWER TO PETITION FOR DECLARATORY JUDGMENT—Filed August 15, 1942

Come now Earl L. Clark, Drain Commissioner of the County of Oakland and the Board of Supervisors of the County of Oakland, entering their appearance in the above entitled cause and making answer to the subsequent allegations as follows:

I

They neither admit or deny the allegations therein contained, having no knowledge thereof and leave Plaintiffs to their proofs thereon;

II

They admit the allegations therein contained.

III

They admit the allegations in the first two sentences contained and admit that Petitioners contend as claimed in the third sentence but deny that their contention is correct averring the fact to be

1. (a) That a large portion of the original drain district approximately forty-five per cent (45%), reverted to the State for non-payment of taxes on the several parcels or descriptions therein:

(b) That all taxes and the lien therefor, including drain taxes and deferred installments thereof, were cancelled on the lands referred to in paragraph (a) above;

(c) That the original assessment district as such is no longer in existence;

[fol. 38] (d) That the remaining portion of the original district was never intended to pay the entire cost of the project, is financially unable to do so and to throw the burden of the original cost on the remainder of the district would confiscate all the property therein;

(e) That the original assessment was on the theory of benefit to the property taxed and the radical reduction of the amount of parcels would increase the assessment against the remaining parcels without a corresponding benefit, contrary to the theory of this type of special assessment, and such an assessment would be illegal and unconstitutional.

IV

Respondents deny that an actual controversy exists for the reason that all the questions as stated by Petitioners have been passed upon and decided against the contention of Petitioners by the Supreme Court of Michigan;

(a) Respondents respectfully submit that the propounded question (a) has been answered by the decision in the negative in Municipal Investors vs. City of Birmingham, decided by the Michigan Supreme Court, July 2nd, 1941;

(b) Respondents deny the pertinence of the question propounded in Paragraph IV, (b), for the reason that the Michigan Supreme Court has passed upon and decided this question against the contention of Petitioners;

(c) Respondents submit that this question as propounded by Petitioners has been answered in the negative in Municipal Investors vs. the City of Birmingham, decided by the Michigan Supreme Court July 2nd, 1941.

[fol. 39]

V

Respondents admit that the disposition of the matter in controversy must be in conformance with the laws of the land but deny that in order to do so affirmative answers must be given to the questions propounded by Petitioner.

Respondents admit that the law cited by Petitioner provides for "Additional deficiency assessments * * * to be levied in accordance with the percentages fixed in the original assessment rolls," but denies that it would be legal or constitutional, with the district greatly reduced, to so tax the remaining lands.

VI

As stated in the foregoing portions of this Answer, Respondents do claim that Petitioner's propounded questions should be answered in the negative but deny that an actual controversy is presented here because all the questions propounded by petitioners herein have been settled by the Michigan Supreme Court unfavorable to the Petitioners.

VII

Respondents deny that there is an actual controversy before the Court for the reason stated above and deny that any refunding should take place. Respondents, further answering, deny that Petitioners are entitled to the Declaration of Rights sought in Paragraph 7, I, II, III, and IV.

Respondents neither admit nor deny that Petitioners will suffer a loss on their bond but do aver that if they suffer a partial loss they will suffer no more than taxpayers who were expected to pay these taxes and who have lost their lands have suffered, and Respondents respectfully submit [fol. 40] that there is nothing more sacred about a bondholder than a taxpayer.

Respondents admit that approximately forty-five per cent (45%) of the original assessment district is no longer subject to assessment under the decision in Municipal Investors vs. the City of Birmingham and that if Petitioner's contentions are correct forty-five per cent (45%) of the original cost of the project would be thrown on the remain-

ing fifty-five per cent (55%) of the district without a corresponding benefit and with not only the possibility but the probability of confiscation of the remaining portion of the original district.

VIII

Wherefore, Respondents pray that the Petition be dismissed and that this answer may stand as a motion to dismiss to be brought on for hearing at the time the case reaches trial.

Your respondents further move to dismiss for the reason that this Court does not have jurisdiction over the subject matter of this case under Sections 13903 to 13909 inclusive, Michigan Compiled Laws of 1929 as alleged by Petitioner for the reason that it is not the purpose of the declaratory judgment act to grant relief in cases where there are numerous disputed questions of fact and where the petition for relief under the declaratory judgment act is used as a substitute for the ordinary form of action as in this case.

(Signed) Harry J. Merritt, Corporation Counsel.

[fol. 41] In Circuit Court of Oakland County

Stipulation Providing for Amendment of the Petition and Answer—Filed November 13, 1942

The parties hereto, by their respective counsel, hereby agree that the petition may be, and is hereby, amended to substitute 1937 for 1939 as appearing in paragraph 4 (c), bottom of page 3, and in paragraph 6, line 6, page 5, and that the answer may be, and is hereby, amended to substitute the following for paragraph 1 thereof:

"They admit the allegations contained in Paragraph I of the petition."

Voorhies, Long, Ryan & McNair, Dykema, Jones & Wheat, Attorneys for Plaintiffs. Harry J. Merritt, Attorney for Defendants.

In Circuit Court of Oakland County

Opinion of the Court—Filed December 16, 1942

Petitioners as holders of bonds of the East Clawson Drain District seek a declaratory judgment to determine the ob-

ligation of the respondent drain commissioner to impose a deficiency assessment upon all the lands as determined benefited in the drain district.

An interesting factual circumstantial background, unessential of narration as a prerequisite of determination, is that out of an issue of bonds dated November 1st, 1927 in the principal sum of $300,000 to finance the cost of con-
[fol. 42] struction there remains due and unpaid the sum of $223,000 plus accrued interest from May 1st, 1939. The cost of improvement was distributed in these percentages: the district 77.5%; County of Oakland at large 3.5%; Township of Troy at large 2.5%; Township of Royal Oak at large 6.5% and Village, now City of Clawson at large 10%.

Proofs offered in the case show that 65% of the lands in the district are either retained or have been sold by the state as tax delinquent land, subject to the provisions of the Scavenger Sale Act, being Act No. 155 of Public Acts of 1937 as amended.

Respondents offer objection to a spread of the deficiency assessment, stating it is a factual and legal impossibility. The principal objection is that the aforementioned 65% of the lands in the district retained or sold by the state under Act No. 155 of Public Acts of 1937 as amended are not subject to the levy of such a deficiency assessment in the interpretation of Municipal Investors Association v. City of Birmingham, 298 Mich., 314.

Observations are here made in an endeavor to form an opinion based upon logical deductions. Bondholders acquire securities through a contract with the issuing unit of government within the confines of the law existent at time of issue.

The phraseology of Section 18, Chapter 11 of Act No. 331 of Public Acts of 1927 referred to as Section 4940 of Compiled Laws of 1929, M. S. A. 11.104 as amended by Act No. 129 Public Acts of 1939, a pertinent statute as of the date of issue of the bonds reads as follows, "If there is not sufficient money in the fund in a particular drain at the time of the maturity of the bonds last to mature to pay all outstanding bonds with interest, whether such insuffi-
[fol. 43] ciency is due to the anticipation of installments as provided in the preceding section, or to failure to sell any lands for delinquent taxes, or to any other cause, it shall

be the duty of the commissioner to at once levy an additional assessment as hereinbefore provided in such an amount as will make up the deficiency. Any surplus remaining after the payment of the bonds and interest shall remain in the county treasury and be used for the maintenance of the drain."

Respondent county evidences concern over the provision of Section 4937 of the Compiled Laws of 1929 providing that, "In case the amount available in the drain fund shall be insufficient to pay the principal or interest of any such bonds heretofore issued when they become due, the same shall be advanced and paid by the county out of its general funds and reimbursement to said general fund shall be made out of the drain taxes collected: Provided, That such advancement by the county shall not cause the total debt of the county to exceed the constitutional limitation thereof," and asks that it be construed as not making the bonds a general obligation or as pledging the full faith and credit of the county for their retirement. The question is vital to the ultimate full retirement of the bonds, but is not one of the objectives of the declaratory judgment sought by the petitioners.

Yielding to a hoped pardonable temptation, some comment is here made on the intriguing issue without an attempt at solution pronouncement. It is made to elicit interest of others vitally concerned not here litigant. The section is now repealed and the wisdom of its enactment apparently repudiated. The provision requiring advancement was held a sustainable legislative imposition incident to the act of the issuance of the bonds. Moore [fol. 44] v. Harrison, 224 Mich., 512. The rights and duties of a county are not based upon contractual relations. They are organized for public purposes and their powers, rights and duties may at any time be modified or abolished by legislative action. Township of Clearwater v. Board of Supervisors of Kalkaska County, 187 Mich., 516. This gives legislature right to dictate the application of general funds on hand raised for a public purpose as interpreted in University of Michigan v. Pray, 264 Mich., 693. The advance provision was there held a remedial mandatory right. It was held not subject to avoidance as to an interim issue by a change of the remedial provision in Whitman v. Township of Royal Oak, 269 Mich., 146. Some logic may be found in recognizing, in the furtherance of a public pur-

pose, an issuing unit of government to facilitate sale of special assessment bonds, may agree to advance from its general fund sums for payment in event of a special assessment fund deficiency.

It is exceeding- troublesome to find the limitation on advancement that must logically exist. It is stated in the case of the Township of Royal Oak v. City of Pleasant Ridge, 295 Mich. 284, to advance does not transform special assessment bonds into general obligation bonds or change their character. The cited cases seem to indicate the county is not relieved from advancing by reason of the fact that certain lands in the assessment district are lost through tax sale and there in no chance reimbursement and that advance is not predicated upon the possibility of reimbursement. May advance then be interpreted as a word implying general obligation liability carrying the full faith and credit of the county? If this is true the general fund of the county must meet the assault of hundreds of special assessment bond holders attacking for funds they obviously [fol. 45] will never receive from special assessment accounts.

The drain commissioner in establishing a drain project is not the agent of the county. He is performing a special statutory duty for the drain district. Section 4937 of the Compiled Laws of 1929 providing for the payment of special assessment bonds out of the general fund in event of a deficiency does not establish county liability. These are the holdings of Brooks v. County of Oakland, 268 Mich., 637. The problem of advancement resulting in a general obligation was left for further consideration in Township of Royal Oak v. Pleasant Ridge supra. When a case is established, as may be possible with the East Clawson Drain District, that exceeding county liability ensues through the hopelessness of reimbursement, that the orderly functions of county government are imperiled through advancement, that the county is building projects of great magnitude for the restricted benefit of a few at the expense of all, the limitations on advancement, here suggested as logically existing, may be found. If advancement from the general fund does not carry the necessity of a general levy to pay a deficiency, the problem may be over-emphasized. Nevertheless, repeated demands for payment out of the general fund creates an aggravating situation not conducive to the orderly process of government.

This court for determination of issues raised by petitioners, in compliance with Act No. 36 of the Public Acts of 1929, Section 13903-13905, Compiled Laws of 1929, offers this opinion. The availability of lots sold under Act No. 155 of Public Acts of 1937 as amended for a deficiency assessment under Act No. 331 of Public Acts of 1927 as amended must be viewed in the reflected light of Municipal Investors Association v. City of Birmingham supra. It was there held that the purchasers of bonds are assumed to [fol. 46] have purchased with knowledge that the lien for payment upon the properties securing the taxes and assessment may be discharged. A new chain of title originates free from any incumbrances. Anything is an incumbrance which constitutes a burden upon the title of property. The possibility of reassessment for the benefit is a liability held to constitute an incumbrance. A drain tax is a lien from the time there is an assessment for benefit. A warranty deed obligated the grantor to payment even though the tax could not have been paid at the time the deed was given. Lindsay v. Eastwood, 72 Mich., 333. It is here pointed out that Section 4939 of Compiled Laws of 1929 specifically states that payment in full of drain tax is a payment in full in light of possible reassessment. Reassessment must be predicated upon the basis of benefit.

This case is controlling. Lands sold under Act 155 of Public Acts of 1937 as amended are not subject to a deficiency reassessment. Under this holding, 65% of the lands in the district are lost to the possibility of reassessment.

The right to have a deficiency assessment spread against the remaining 35% of the lands in the district has not been presented sufficiently to justify a determination that would under all possible eventualities be applicable. The parties in interest in the district are not here represented. Many questions involving their rights have not been raised. At the time of hearing of objections as to the necessity of the project, the law contained no provision for a deficiency assessment, except as contained in Section 18, Chapter 10 of Act 316 of Public Acts of 1923 which omitted phraseology of Section 18 of Chapter 10 of Act 331 of Public Acts of 1927 providing for the levying of such an assessment due to the [fol. 47] failure to sell any lands for delinquent taxes. Such a provision was enacted in the interim between that time and the issuance of the bonds. This may have a material effect upon the rights of the parties. The regular special

assessment for the retirement of the bonds was not levied for a period of several years. The interest of those paying may have been prejudiced thereby effecting their reassessment obligation. Sums may have been lost through such inaction that would have otherwise been obtainable. The remedy of reassessment was not sought promptly upon the maturity of the bonds. A deficiency assessment upon the remainder of the property in the district which did not pass through the Scavenger Sale is contrary to all the established principles of uniformity and equality in assessment as guaranteed by the constitution as pointed out by the intervenor City of Royal Oak. "Special assessments or special taxation, therefore, is lawful and constitutional only when founded upon specific benefits accrued from the improvement for which the tax or assessment is laid. In other words, the test in all special taxation or assessment proceedings which is constantly invoked by the courts, is that the assessment should not exceed the special benefit to the property." McQuillin Municipal Corporations, 2nd Edition, Vol. 5, page 576. "Special Assessments shall not be levied in excess of the benefits conferred, whether by valuation, front foot area, or any other method. Norwood vs. Baker, 172 U. S. 269, 277, 288." "Obviously local assessment or special taxation laws cannot ignore constitutional restrictions or guarantees, as due process of law, equal protection of the law, or permit taking private property without just compensation." McQuillin Municipal Corporations, 2nd Edition, Section 2167. Such an assessment would be a tax having no relationship to benefit and is not valid special assessment levy.

[fol. 48] There should be funds available from lots sold and those that may be sold under Act No. 155 of Public Acts of 1937 as amended to materially alter and reduce the amount of the deficiency. It seems illogical to believe that lots in this section of the metropolitan area have sold and will be sold if the matter of sale is judiciously handled, for sums materially less than the determined beneficial improvement tax. It would seem that by legislative action or otherwise, application of funds so received should be to the retirement of the bonds. Other functions of government have succeeded in operation and application of a part of the proceeds thereto does not seem essential. They are most benefited by a return of the property to the tax rolls to support the present operation of government.

The provision for a deficiency assessment was enacted to cover a normal condition, not such an abnormal one as here presented. An attempt at reassessment on the basis of the percentage of benefit allocated to each parcel, if legally possible, with the exclusion of the exempted Scavenger Sale lots would not accomplish the retirement of the bonds. It would only accomplish confiscation of property. Any attempt at reassessment should at all events be predicated upon a determination that the same is not an idle act for it is well established legal axiom that courts will not order nor direct acts of this nature. Obviously for the reasons here enumerated it is determined, on the showing here made, that a deficiency assessment upon the remaining portion of the district omitting the area embraced in the lots sold under Act No. 155 of Public Acts of 1937 as amended may not be made.

George B. Hartrick, Circuit Judge.

Dated: December 16, 1942.

[fol. 49] In Circuit Court of Oakland County

Declaratory Judgment—Filed January 13, 1943

At a session of said court held this 13th day of January, 1943.

Present: Honorable George B. Hartrick, Circuit Judge.

This matter having come on to be heard upon petition and answer, testimony taken in open court and arguments of counsel, and the court having filed its opinion upon the matters of controversy, the court now makes the following declaration of right as between the parties hereto.

1. That respondents are not obliged by Section 18, Chapter X, Act 316 Michigan Public Acts 1923, as amended by Act 331 Michigan Public Acts 1927, and Act 129 Michigan Public Acts 1939, to levy and spread, in accordance with the percentages in the original assessment roll of East Clawson Storm Sewer Drain against the governmental subdivision taxed at large therefor and against all lands in the district not owned by the United States, State of Michigan, or municipalities, and used by them for governmental purposes, an additional deficiency assessment sufficient when

collected to pay all outstanding bonds of said district and interest thereon.

2. That if refunding bonds and certificates of indebtedness are issued by East Clawson Storm Sewer Drain District, the Drain Commissioner will not be empowered under Act 129 Michigan Public Acts 1939 to provide, subject to the directions of the Public Debt Commission, for additional levies of assessments prior to the maturity of such [fol. 50] refunding bonds and certificates of indebtedness as he shall deem necessary to prevent default in payment of interest on such obligations and the maintenance of a sinking fund for their retirement.

3. That the provisions contained in paragraph 11 of the order of the Drain Commissioner dated April 9, 1942, copy of which is attached to the petition, may not lawfully be performed.

4. That lands in said Drain District which have been transferred to private owners by the State of Michigan by deed or contract made pursuant to Act 155 Michigan Public Acts 1937 are exempt from an additional deficiency assessment to meet requirements of bonds issued by said District.

5. The petition is, therefore, denied, but without costs, this being a public matter.

6. It is hereby certified that the amount involved in this controversy exceeds in value the sum of Five Hundred ($500.00) Dollars.

George B. Hartrick, Circuit Judge.

[fol. 51] In Circuit Court of Oakland County

Bill of Exceptions—Filed April 9, 1943

Appearances

This case came on to be heard October 23, 1942 upon petition and answer before Honorable George B. Hartrick, Circuit Judge (without a jury). Petitioners were represented by Irvin Long, their attorney, and respondents were represented by Harry J. Merritt, their attorney. Thereupon the following proceedings occurred.

Mr. W. C. Hudson, attorney for the City of Royal Oak, stated that his client had an interest in the subject matter of the suit and that he desired to intervene in its behalf for the purpose of submitting a brief. No objection was made to this by the original parties to the proceedings.

STATEMENT OF MR. LONG

Mr. Long stated petitioners' position as follows:

In order that the Court can understand the case without reading all the petition and the answer, I will go back and state some facts. The East Clawson Drain District was organized back in 1927 and in November, 1927, it issued bonds in the amount of $300,000, payable serially. They are all due now. There was litigation over this drain like many others and the Supreme Court in a case of East Clawson vs. Van Wagoner, decided that this was a legal drain and therefore an assessment would have to be levied. That was an action like so many others in which the village complained that this was a sewer and not a drain and therefore they should not have to pay the assessment. The Supreme Court decided that it was a legal drain.

The Court: Give me the citation of that case.

Mr. Long: I think it is 268 Michigan.

The Court: Never mind.

[fol. 52] Mr. Long: In this case there is no complaint or no argument over the legality of the drain but I will furnish you with that citation.

The Court: All right. Go ahead.

Mr. Long: For several years there was no annual levy of installments of the assessments. There was more or less negotiations between the bond holders committee and the Drain Commissioner, both Mr. Clark and Mr. Wedge but never arriving at any conclusion. Finally about a year ago, there was further negotiation and there was a tentative agreement which resulted in the entry of a new order by the Drain Commissioner for the refunding of these bonds. Now, there are $223,000.00 worth of bonds outstanding. I have prepared a little brief on the question which I will hand up to you, in which I erroneously stated there were $168,000. There is a plan which was agreed upon between the bondholders and the Drain Commissioner whereby they are to be refunded and the bonds at low rates of interest.

There is, however, a question of law involved in the case and which has to be tested because of the fact that it effects the amount that can be realized upon the new assessment that will have to be levied to service these bonds, and that is the question whether or not property which was in the district and which went to the Scavenger sale is now subject to a like assessment. Now, that does not involve the property which is still held by the State but only involves property that is now back in private hands so it is subject to general taxation for the village, township and county and so on and there is a difference between the two parties as to whether or not the Drain Commissioner is obliged to levy his assessment on those properties or whether he is forbidden by the law to levy such an assessment. It [fol. 53] seems to be conceded if he is empowered to levy a supplemental assessment on that type of property that the refunding plan would probably be susceptible of success. There will be enough monies derived from the property in the district and the municipalities so that they can pay the interest on these bonds and can pay off a reasonable amount at times over the long period involved, so ultimately the new bonds can be paid, but, on the other hand, if this property that has gone to the Scavenger sale is exempt from any further tax for these drain bonds, then this plan will probably not work out because there wouldn't be enough, from the other property in the district and the municipalities to support the refunding plan, so this action is started, rather with the consent of the parties because we wanted this thing decided. We have tried to eliminate all questions of fact in the case and have the particular legal proposition decided. It is an action under the declaratory judgment act and there were a lot of questions involved, but the principal one is the liability of this land that has gone to the Scavenger sale.

There is quite a voluminous statement of facts attached to the petition, a very carefully drawn order of the Drain Commissioner setting forth the plan of refunding and a very careful analysis of the drain district which was prepared by Mr. Carey, the refunding agent employed by the Drain Commissioner, in which the last exhibit shows somewhat the situation in the drain district. There were at large taxes against Oakland county and the township and village of Clawson, which amounted to 22½% of the total levy, that is 22½% of the cost of the drain was assessed at large. Of course, those at large assessments are against munic-

palities and the municipality can't go to the Scavenger sale. Then when it comes down to the district, it shows a [fol. 54] great deal of this property has gone to the Scavenger sale, so, as a result of Mr. Carey's total which was apparently true at the time the petition was filed, the amount which remains on the roll is the at large assessments of 22½%, the acreage assessments in the district of 8.4% and subdivisions in the district of 14.4%, showing that there is only 45% of the amount of the cost which is unaffected by this Scavenger proceeding. In other words, there is about 23% of the land in the district which have gone to the Scavenger sale. Some of those lands, the taxes have been paid in full, that is the original levies and there is then about—there is land in the district amounting to about 55% of the total cost of the drain. We don't mean there is 55% in area, we mean 55% of the amount originally assessed, has gone to the Scavenger sale and of course, if that land is exempt from further tax, it will mean that the whole cost of these bonds will have to be borne by the municipality at large and by this small percentage of land where the taxes have either been paid in full or where they are being paid from time to time and where there hasn't been that procedure through the Scavenger sale. I wonder if I make myself clear?

The Court: Yes. The only thing I want to ask, whether the Scavenger sale has any representative in Court who might want to urge their position.

Mr. Merritt: My position will support that, your Honor.

The Court: In other words, Mr. Merritt, you are going to take the position of presenting to the Court any authority supporting the Scavenger sale?

Mr. Merritt: Yes, because I think that is essential.

Mr. Long: I presume Mr. Hudson will also present that. [fol. 55] Mr. Hudson: I am not sure what my position will be only I am sure it will be that the city's assessment should not be increased.

The Court: You are going to take the position whether or not the Scavenger lot owners are subject to reassessment that they must not pass as further invasion of the city's general liabilities.

Mr. Hudson: That is correct.

Mr. Long: Now, as to whether there is any need of any further testimony, I don't doubt but what Mr. Merritt wants to present merely the situation on the roll at the

present time. It seems to me we are just adding to the extent of the record and making it more expensive for an appeal, to go into that. The exhibits prepared by Mr. Carey were true at the time when the petition was filed. I presume there has been some land that has been brought back from the state and now in private hands and there may be some slight change but as far as legal principles are concerned, it doesn't make any difference whether these figures are exactly accurate or not, whether it is 45% or 47% or what it is. There is no question but what there is a large area of land in that district which has gone to the Scavenger sale. There is no question but what there are a good many of these lots which are still in the hands of the State and which cannot be assessed and there will probably be a number of those parcels which will get back in private hands because we know that is going on all the time.

The Court: Mr. Long is simply saying Mr. Carey's exhibit is sufficient for the legal determination of the issue.

Mr. Long: Yes.

Mr. Merritt: That is partly right but I think the exhibit we have will enable the Court to see the picture much more clearly.

[fol. 56] The Court: I have no objection to having you put it in.

STATEMENT OF MR. MERRITT

Mr. Merritt: If I may make a preliminary statement. Mr. Long has partially stated the questions involved here and perhaps there are other questions that I feel are involved and desire to call to the Court's attention. In other words, he stated that the question here was the liability of lands which have gone through the Scavenger sale. Now, I think there are two other questions, what is the liability of the remaining lands which have not gone through the Scavenger sale and third, what is the liability of the county to advance, depending on the conclusion of the former questions.

I would like to further state that it has never at any time been the position of Oakland County to repudiate its indebtedness and when I say Oakland County, I include this drain district but as Mr. Long stated, this question remains as an obstacle to any refunding and the matter had to be brought to the Court so we would know what property to assess and what not to assess.

CLARK, EARL L., a witness for respondents, was then sworn and testified as follows:

I am Drain Commissioner of Oakland County and have custody of the record of the Drain Office. I have with me the assessment roll of the East Clawson Storm Sewer Drain District. It is in a book which contains the assessment roll on the district.

(The book containing the assessment roll was ordered considered as Exhibit 1 and received in evidence.)

[fol. 57] EVANS, ROBERT JOHN, a witness for respondents, was then sworn and testified as follows:

Direct examination:

I am employed in the office of the Oakland County Drain Commissioner.

Q. What is your full name, please?

A. Robert John Evans.

Q. Are you employed in the office of the Oakland County Drain Commissioner?

A. I am.

Q. Will you state whether or not you made a summary roll from the assessment rolls of the East Clawson Drain District showing the original district, the percentage of lands that had gone through the Scavenger sale and were either still owned by the State or had passed on to private individuals and the remaining district?

A. You mean did I make a percentage of that?

Q. Did you make the map you have in your hand?

A. I made a map showing the status of that drain district. The map was marked Exhibit 2.

The line of the district is outlined in the map in green. Portions of the map marked in red are properties which went to Scavenger sale. Portions marked in blue are properties on which the drain assessments have been paid in full. The remaining portion in white represents property remaining on the rolls of the East Clawson Storm Sewer Drain. The yellow lines represent streets and alleys. I prepared Exhibit 2 from the assessment rolls. It shows the status of the district up to last Friday.

(Exhibit 2 received in evidence.)

[fols. 58-61] I do not know whether those portions marked in red are owned by the State or have gone back to private hands. As far as I know some of them may be in the hands of private owners. My search was terminated when I saw that a parcel of property went into the Scavenger sale. I do not know whether at the Scavenger sale it was sold by the State to the former owner or to an outsider, or whether held by the State. We haven't any record of that in our office.

Mr. Merritt: We admit portions of it undoubtedly have been sold to private persons, your Honor, how much, we don't know.

Q. How could that be determined?

A. Through the County Treasurer's office only, I think.

(The testimony being concluded, the issues were argued both orally and by briefs and on December 16, 1942, the court filed its opinion which appears of record, upon which judgment was entered denying the petition.)

[fol. 62] IN THE SUPREME COURT OF MICHIGAN

KENNETH M. KEEFE and WALLACE D. BRADFORD, Petitioners-Appellants,

v.

EARL L. CLARK, Drain Commissioner of Oakland County, and Board of Supervisors of Oakland County, Respondents-Appellees

Before the Entire Bench

OPINION—Filed October 11, 1943

BUSHNELL, J.:

Petitioners Keefe and Bradford have appealed from a declaratory judgment which determined that respondents, Drain Commissioner and Board of Supervisors of Oakland county, are not obligated, by § 18, chapter X of Act No. 316, Pub. Acts 1923, as amended by Act No. 331, Pub. Acts 1927, and Act No. 129, Pub. Acts 1939, 1 Comp. Laws 1929, § 4940

(Stat. Ann. § 11.104), to levy an additional assessment to cover the deficiency in a drain tax. Petitioners are the owners of bonds, which are a part of an original issue in 1927, of $300,000, to finance the construction of the East Clawson Storm Sewer Drain.

This improvement was held to be a legal drain and the assessment, therefore, valid in Village of Clawson v. Van Wagoner, 268 Mich. 148. The original assessment roll was payable in annual installments from 1928 to 1937, inclusive, and was levied as follows: 77.5 per cent against lands in the drainage district; 3.5 per cent against the county at large; 2.5 per cent against Township of Troy; [fol. 63] 6.5 per cent against the Township of Royal Oak; and 10 per cent against the Village of Clawson. All of the bonds had matured by May 1, 1938, and as of December 31, 1941, $33,440 was due for interest and $223,000 for principal.

The assessment installments were levied for four years from 1927 to 1931, and then discontinued. In 1937, in contemplation of a refunding arrangement, a supplemental roll was prepared spreading the remaining six installments of principal over a period extending from 1937 to 1961, and the accumulated interest over a ten year period. The failure to levy after 1931 was due to a large tax delinquency. During 1939 and 1940 about 47 per cent of the lands in the district were bid in by the State at tax sales. How much of these lands have since been returned to private ownership is not disclosed by the record. Before negotiations between the bondholders and the drain commissioner were consummated, the case of Municipal Investors Association v. City of Birmingham, 298 Mich. 314, was decided on June 30, 1941. Respondents contended that this decision was authority for the proposition that lands in the drainage district which passed through a "scavenger sale" became exempt from any deficiency assessment for unpaid drain taxes. The parties held the refunding plan in abeyance pending decision of the Supreme Court of the United States in the Birmingham appeal, which decision was rendered on April 27, 1942, and reported in 316 U. S. 153, 62 S. Ct. 975, 86 Law Ed. 1341. This case was commenced June 25, 1942.

Petitioners in the instant case argue that the action of the Supreme Court of the United States in the Birmingham case was inconclusive of their rights, and that it became

necessary for them to resort to declaratory judgment proceedings in the state courts. The circuit judge held that our decision in the Birmingham case was conclusive of the issues involved, and that lands sold by the State Land Office [fol. 64] Board, under the provisions of Act No. 155, Pub. Acts 1937, Mason's Cum. Supp. 1940, § 3723-1 et seq. (Stat. Ann. § 7.951 et seq.), were not subject to a deficiency assessment, and since a large portion of the lands in the district were lost to the possibility of reassessment, a deficiency assessment upon the remaining lands which had not been sold for delinquent taxes was "contrary to all the established principles of uniformity and equality in assessment as guaranteed by the Constitution," in that such an assessment "would be a tax having no relationship to benefit."

Appellants now argue that lands which have been sold to the State for delinquent taxes are not exempt from the deficiency assessment after their resale by the State, and that, if the act in question provides for such an exemption, it is in violation of section 9 of article X of the Constitution of 1908, which reads:

"The power of taxation shall never be surrendered or suspended by any grant or contract to which the state or any municipal corporation shall be a party."

They also contend that, if the act is construed to exempt such lands from deficiency assessments, it does so in violation of the impairment of obligation clauses of the State and Federal Constitutions. They further contend that, even if such lands are exempt, the remaining lands and the municipalities against which the original assessment was spread at large are still subject to an additional tax for the purpose of retiring the unpaid drain bonds.

The section of the General Drain Law, upon which petitioners rely, reads in part:

"If there is not sufficient money in the fund in a particular drain at the time of the maturity of the bonds last to mature to pay all outstanding bonds with interest, [fol. 65] whether such insufficiency is due to the anticipation of installments as provided in the preceding section, or to failure to sell any lands for delinquent taxes, or to any other cause, it shall be the duty of the commissioner to at once levy an additional assessment as hereinbefore

provided in such an amount as will make up the deficiency." 1 Comp. Laws 1929, § 4940, as amended by Act No. 129, Pub. Acts 1939 (Comp. Laws Supp. 1940, § 4940, Stat. Ann. 1942, Cum. Supp. § 11.104).

The general drain law must be read and construed together with the general property tax law of the State for the reason that:

"All drain taxes assessed under the provisions of this act shall be subject to the same interest and charges, and shall be collected in the same manner as state and other general taxes are collected, and collecting officers are hereby vested with the same power and authority in the collection of such taxes as are or may be conferred by law for collecting general taxes. * * *." General drain law (chap. 10, § 5, 1 Comp. Laws 1929, § 4927 (Stat. Ann. § 11.91)).

The general property tax law, § 67, 1 Comp. Laws 1929, § 3459, as last amended by Act No. 234, Pub. Acts 1941 (Comp. Laws 1942, § 3459, Stat. Ann. 1942 Cum. Supp. § 7.112), provides that the final decree for the sale of lands assessed shall contain, among other provisions, the following:

"It is further ordered, adjudged and decreed that title to each parcel of land ordered in this decree to be offered for sale, and which parcel of land is bid in at such sale to the state, shall become absolute in the state of Michigan on the expiration of the period of redemption from such sale, and all taxes, special assessments, which are charged against or are liens upon such parcel, and other liens and encumbrances, against such parcel, of whatever kind or nature, shall be cancelled as of such date."

The law further provides in the State Land Office Board Act (Act No. 155, § 9, Pub. Acts 1937, as amended by Act No. 363, Pub. Acts 1941 [Comp. Laws Supp. 1943, § 3723-9], Stat. Ann. 1942 Cum. Supp. § 7.959):

"Any quitclaim deed or deeds executed by the board or department shall convey title in fee to land under the provisions of this act, free from any encumbrances, including all taxes and special assessments which were cancelled by the decree pursuant to which the state obtained title."

The latter act was discussed in Municipal Investors Association v. City of Birmingham, 298 Mich. 314, and those members of the court who concurred in the opinion of Mr. Justice Sharpe held that "anything is an incumbrance which constitutes a burden upon the title," and that "it [fol. 66] would naturally follow that the possibility of reassessment would constitute an incumbrance and thus be cancelled."

Appellants argue that the Birmingham case may be distinguished on its facts and is not conclusive of the issues involved in the instant appeal because the legislature, by its amendment to §67 of Act No. 206, Pub. Acts 1893, (1 Comp. Laws 1929, §3459, Stat. Ann. §7.112), effective June 16, 1941, indicated that only those "special assessments which are charged against or are liens upon such parcel," are to be cancelled, and not deficiency assessments which never had been charged against the land, and were not, therefore, liens at the time of sale. We are unable to agree with this argument. The decree of sale provided, as required by statute, that "other liens and incumbrances against such parcel of whatever kind or nature shall be cancelled as of such date." Our Birmingham decision is authority for the proposition that the possibility of reassessment would constitute an incumbrance, and is, therefore, cancelled.

In considering appellants' argument with respect to the impairment to the obligations of the contract, it is important that the underlying causes leading to the legislation, which appellants now attack, be fully comprehended and understood.

We need not repeat the history of this legislation, which is detailed in Baker v. State Land Office Board, 294 Mich. 587,592 et seq., and which is quoted in our Birmingham decision. The impairment argument was presented in both the Baker and the Birmingham cases and denied in each decision.

The statute, Act No. 155, §10, Pub. Acts 1937, as amended by Act No. 363, Pub. Acts 1941. (Comp. Laws Supp. 1942, §3723-10, Stat. Ann. 1942 Cum. Supp. §7.960), provides that, after the sale of property by the State Land Office Board, each tax assessing unit shall be paid its pro rata share of the proceeds of the sale. The bondholders' maximum security was thus realized after the tax lien was foreclosed when the subsequent sale of the property was consummated. [fol. 67] Were it not for this act, under the then existing

circumstances, the lands would have been rendered valueless for further revenue purposes because of accumulated delinquent taxes, and the bondholders would have realized nothing from their lien. We cannot, therefore, say that the bondholders' contract has been impaired when they received the maximum benefit under the circumstances. As said by the Supreme Court of the United States in the Birmingham appeal:

"If the stated powers of the Village to levy an assessment on improvement district property required that the lots assessed, after sale for default in their installments, should be subject to an additional assessment to cover such deficiencies, the burden might depress their value to a point where little if anything could be realized for the bondholders, and successful sales for nonpayment would be frustrated. This would clearly be true where, as here, a very large proportion of the assessment were defaulted."

To this we add the observation that, if the lands were again subject to a deficiency assessment, after sale to the State and conveyance by it to a third party, the possibility of the restoration of this property to the tax rolls would be considerably lessened because prospective buyers might well hesitate to assume such an obligation.

The rule that existing laws are read into contracts, in order to establish the obligations between the parties, is subject, however, to the well-known reservation of the essential attributes of the sovereign power, and this reservation must also be read into contracts as a postulate of the legal order. Baker v. State Land Office Board, 294 Mich. 587. As stated by the Chief Justice in Home Building & Loan Association v. Blaisdell, 290 U. S. 398, 437, 78 Law Ed. 413, 428:

"The economic interests of the State may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts."

The act does not, as appellants argue, surrender the tax-[fol. 68] ing power as prohibited by section 9 of article X of the Michigan Constitution, because the lands in question are subject, from the time that the purchaser's bid is accepted by the State Land Office Board, to all taxes, other than those extinguished by the tax sale. Wilson v. City of Pontiac, 294 Mich. 79. That portion of the act cancelling taxes is a

valid exercise of the police power. The State's immunity from taxation on the lands while held by it is in no way passed on to the subsequent individual purchaser of these lands from the State.

Appellants contend that, if it be held that the deficiency assessment cannot be levied against lands purchased from the State, that it can, nevertheless, be levied against those lands which have not been sold for delinquent taxes and against those municipal units against which a proportion of the original assessment had been spread at large.

The trial judge determined that such assessment would violate the uniformity clause of the Constitution. If the entire amount of the deficiency assessment were spread against such lands and taxing units, the argument would be logical and sound. However, it is only fair and reasonable that such lands and municipalities continue to bear their just proportion of the cost of improvement originally imposed. The act does not cancel incumbrances on lands that have not been sold for delinquent taxes nor those portions of the special assessments which were spread at large against the several municipalities.

A deficiency assessment should be spread and there should be deducted from 77.5 per cent. of the total deficiency that portion which would have been applicable to lands in which the State acquired absolute title under delinquent tax sales, and the remainder of the 77.5 per cent. should be spread against lands not sold under that act. 22.5 per cent of the deficiency assessment should be spread as follows: [fol. 69] 3.5 per cent against the county at large, 2.5 per cent against the Township of Troy, 6.5 per cent against the Township of Royal Oak, and 10 per cent against the Village of Clawson.

This determination is in accord with the general principle stated by Mr. Justice Holmes in Gast Realty & Investment Co. v. Schneider Granite Company, 240 U. S. 54, 60 Law Ed. 522

"The legislature may create taxing districts to meet the expense of local improvements, and may fix the basis of taxation without encountering the 14th Amendment unless its action is palpably arbitrary or a plain abuse. * * * But * * * if the law is of such a character that there is no reasonable presumption that substantial justice generally will be done, but the probability is that the parties

will be taxed disproportionately to each other and to the benefit conferred, the law cannot stand against the complaint of one so taxed in fact."

The declaratory judgment entered in the circuit court is modified and affirmed, and the cause is remanded for the entry of a judgment in conformity with this opinion. The question being a public one, no costs will be allowed. It is so ordered.

Signed: George E. Bushnell, Edward M. Sharpe, Henry M. Butzel, Raymond W. Starr, Emerson R. Boyles, Walter H. North, Howard Wiest.

[File endorsement omitted.]

[fol. 70] IN SUPREME COURT OF MICHIGAN

42415

KENNETH M. KEEFE AND WALLACE D. BRADFORD, Plaintiffs and Appellants,

vs.

EARL L. CLARK, Drain Commissioner of Oakland County, and Board of Supervisors of Oakland County, Defendants.

JUDGMENT—October 11, 1943

The record and proceedings in this cause having been brought to this Court by appeal from the Circuit Court for the County of Oakland, and the same, and the grounds of appeal specified therein, having been seen and inspected and duly considered by the court, and it appearing to this Court that in said record and proceedings, and in the giving of judgment in said Circuit Court, there is no error, Therefore it is ordered and adjudged that the judgment of said Circuit Court for the County of Oakland be and the same is hereby in all things modified and affirmed, and the cause remanded to the Court below for the entry of a judgment in conformity with the opinion filed herein. It is further ordered that no costs be awarded herein.

[fol. 71] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL FROM THE SUPREME COURT OF MICHIGAN TO THE SUPREME COURT OF THE UNITED STATES

To the Honorable Stanley Reed, Associate Justice of the Supreme Court:

Your petitioners, Kenneth M. Keefe and Wallace D. Bradford, citizens of the State of New York, respectfully show:

I

That they are petitioners and appellants in the above entitled cause.

II

Petitioners and appellants, on June 25, 1942, instituted this suit in the Circuit Court for the County of Oakland by filing a petition for a declaratory judgment, that form of action being authorized by Sections 13903 to 13909, Michigan Compiled Laws. In said petition they alleged that they are holders of bonds of the par value of $32,000.00, constituting a part of an issue of $[illegible]00,000.00, of which there remained unpaid $223,000.00, with some defaulted interest, put out November 1, 1927 by East Clawson Storm Sewer Drain District, a drain district within the said County of Oakland. They showed that all bonds of said issue had matured and were unpaid because collections of assessments levied for the building of the drain known as East Clawson Storm Sewer Drain had not been collected. They invoked [fol. 72] a statute of said State of Michigan in force at the time the said bonds were issued, which had not been repealed, which required that the respondents under such circumstances should levy and spread an additional deficiency assessment against lands in the district and certain municipal corporations sufficient to retire said bonds and discharge the accumulated interest thereon. According to said statute such additional assessment should be levied in accordance with percentages previously fixed in the proceedings by which the cost of the drain was apportioned against the lands and municipalities benefited. Said statute is Section 18, Chapter X, Act 316, Michigan Public Acts of 1923, amended by Act 331, Michigan Public Acts of 1927, and

again amended by Act 129, Michigan Public Acts of 1939, the pertinent provision of which may be found in Section 4940, Michigan Compiled Laws of 1929. Petitioners further showed that respondents, whose duty it was to make said levy and cause it to be spread and collected, had refused to act, on the ground that certain statutes of the State of Michigan enacted in 1937, with subsequent amendments thereto which are more particularly described in paragraph V hereof, and action taken pursuant thereto, deprived them of the power to make any additional deficiency assessment sufficient for the payment of said outstanding bonds and interest thereon. Petitioners, while denying the correctness of the respondents' interpretation of said statute, charged in paragraph 5 of their petition that if the statutes enacted in 1937 were to be interpreted as contended by respondents, they were repugnant to Article I, Section 10, of the Constitution of the United States, in that they impaired the obligation of contracts embodied in said bonds by depriving petitioners of all effective means for the enforcement of their bonds. By respondents' answer they asserted the contention that said statutes enacted in 1937 deprived them of the power to levy and spread such deficiency assessment, and denied that any provision of the Constitution of the United States was violated thereby. The Circuit Court for the County of Oakland upheld the contention of respondents and entered a judgment denying the petition, and declared therein that no additional deficiency assessment could be levied.

[fol. 73]

III

Petitioners duly appealed from said judgment to the Supreme Court of the State of Michigan, the highest court in the State of Michigan in which a decision in said suit could be had. In said appeal petitioners claimed that the judgment of the lower court was erroneous in that it held that no additional deficiency assessment could be levied.

IV

On October 11, 1943 the Supreme Court of the State of Michigan rendered an opinion appearing in Volume 306, page 503, Michigan Reports, and its final judgment in said cause, by which the judgment of the said Circuit Court for the County of Oakland was to some extent modified, and

the cause was remanded to said Circuit Court for the purpose of entering a judgment in accordance with the directions contained in said opinion and judgment of the Supreme Court of said state. It was there decided that a deficiency assessment should be levied and spread, but only against the municipalities and certain lands in the drain district, and as against such municipalities and such lands only for the proportion which the original assessment against them bore to the deficiency, and that those lands in the district which by reason of tax delinquency had passed to the state and had been resold, pursuant to the statutes enacted in 1937 described in paragraph V hereof, and were now privately owned, were exempt from any further assessment to pay the debt of said district as represented by the said bonds. By virtue of said judgment petitioners are thus deprived of substantial resources for the payment of their bonds. In arriving at its conclusion said Supreme Court of the State of Michigan considered and rejected the claim of petitioners that the said statutes enacted in 1937, with amendments thereto, as they were construed by the court, impaired the obligation of their contracts contrary to the provisions of Article I, Section 10, of the Constitution of the United States.

V

That in said cause there was drawn in question the validity of the following statutes of the State of Michigan:

[fol. 74] (a) Act 114 of the Michigan Public Acts of 1937, as amended by Act 282, Michigan Public Acts of 1939, and Act 234, Michigan Public Acts 1941.

(b) Act 155 of the Michigan Public Acts of 1937, as amended by Acts 29, 244 and 329 of Michigan Public Acts 1939, and Act 363 of Michigan Public Acts of 1941,

insofar as said statutes limit the right of petitioners to a full deficiency assessment for the payment of their bonds and interest thereon, and the spread of same against municipalities subject to an at large tax for said drain and all lands in the drain district otherwise taxable, on the ground that said statutes are repugnant to the Constitution of the United States. The decision of the Supreme Court of Michigan was in favor of the validity of said statutes, notwithstanding petitioners' contention to the contrary.

VI

That the judgment and decision of said court was erroneous in sustaining the validity of the aforesaid acts, said acts being in violation of that part of Section 10, Article I, of the Constitution of the United States which provides that "No state shall * * * pass * * * any law impairing the obligation of contract."

VII

That the errors upon which petitioners claim to be entitled to an appeal are more fully set out in the assignment of errors filed herewith. There is also filed herewith a statement as to the jurisdiction of the Supreme Court of the United States, as provided by the rules of said court.

Wherefore, petitioners pray for the allowance of an appeal from said Supreme Court of the State of Michigan, that the decision of the Supreme Court of the State of Michigan may be examined, revised and corrected, and also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of Michigan, be sent to the Supreme Court of the United States, as provided by law.

Paul W. Voorhies, Voorhies, Long, Ryan & McNair, Attorneys for Petitioners and Proposed Appellants. Business Address: 2046 Penobscot Building, Detroit, Michigan.

Dated: Dec. 16, 1943.

[fol. 75] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS

The said Kenneth M. Keefe and Wallace D. Bradford, petitioners and appellants, say that the Supreme Court of the State of Michigan, in considering and construing statutes of the State of Michigan enacted in the year 1937, with amendments thereto, more particularly described as follows (which hereinafter for the purpose of brevity will be referred to as the statutes of 1937,) to-wit:

Act No. 114 of the Michigan Public Acts of 1937, as amended by Act No. 282 of the Michigan Public Acts

of 1939, and further amended by Act No. 234, Michigan Public Acts of 1941, (Compiled Laws of Michigan 1942, Article 3459, Michigan Statutes Annotated 1942, Cum. Supp., Article 7.112,) and also Act No. 155 of Michigan Public Acts 1937, as amended by Acts 29, 244 and 329 of Michigan Public Acts of 1939, and further amended by Act No. 363, Michigan Public Acts 1941 (Compiled Laws of Michigan Supplement 1943, Article 3723-9, Michigan Statutes Annotated 1942, Cum. Supp. Article 7-959),

committed error in the following respects:

1. It erred in denying the claim of petitioners and appellants that said statutes, as it construed them, are repugnant to Article I, Section 10, of the Constitution of the United States, in that they permit the exemption of lands in a drain district from an additional deficiency levy of assessments for the purpose of paying bonds, and thus deprive holders of such bonds of substantial resources, out of which payment of said bonds can be enforced, which resources were secured to them by laws in force when said bonds were issued.

[fol. 76] 2. It erred in denying the claim of petitioners and appellants that said statutes, as it construed them, are repugnant to Article I, Section 10, of the Constitution of the United States, in that they limit the amount which may be assessed against municipalities and lands not exempted to sums insufficient to provide funds for the retirement of bonds contrary to provisions of law in force when said bonds were issued.

3. It erred in holding that Article I, Section 10, of the Constitution of the United States does not forbid the passage of laws which so curtail the power of public agencies to levy taxes for the discharge of their debts that creditors of such agencies are left without means of enforcing obligations held by them.

4. It erred in holding that laws in force at the time of the issuance of bonds by public agencies, providing for the levy of taxes for the discharge of their obligations, do not remain in force by virtue of Article I, Section 10, of the Constitution of the United States, for the purpose of en-

abling the holders of said obligations to secure funds for their payment.

5. It erred in holding that the sovereign power of the state to enact tax laws is not restricted by Article I, Section 10, of the Constitution of the United States, and that thereby an alteration of the laws in force at the time a bonded debt of a public agency is created, which materially reduces the resources of such agency for the payment of such debt, is not an impairment of the obligation of contract.

6. It erred in entering a judgment October 11, 1943, which remands the case to the Circuit Court for the County of Oakland, with directions to enter a judgment denying to petitioners pre-existing rights to a full deficiency assessment against all lands in the district otherwise taxable, and against the governmental units subject to an at large tax for the East Clawson Storm Sewer Drain, in that such direction impairs the obligation of petitioners' pre-existing contract contrary to the provisions of Article I, Section 10, of the Constitution of the United States.

[fol. 77] For which errors appellants pray that the judgment of the Supreme Court of the State of Michigan, entered in said cause on the 11th day of October, 1943, be reversed and a judgment entered in favor of petitioners, and that said cause be remanded to the Supreme Court of the State of Michigan for such additional action by said court as may be necessary in order that appellants may have the relief prayed in their petition for a declaratory judgment.

Paul W. Voorhies, Voorhies, Long, Ryan & McNair, Attorneys for Petitioners & Appellants, 2046 Penobscot Building, Detroit, Michigan.

Dated: Dec. 16, 1943.

[fol. 78] IN THE SUPREME COURT OF MICHIGAN

[Title omitted]

ORDER OF CHIEF JUSTICE OF THE SUPREME COURT OF MICHIGAN DENYING APPLICATION FOR APPEAL TO SUPREME COURT OF THE UNITED STATES—December 9, 1943

The appellants having presented to me their application for appeal to the Supreme Court of the United States from the judgment of this court entered October 11, 1943 in this cause, which application was accompanied by appellants' assignment of errors and statement of jurisdiction, the said application is hereby denied.

Emerson R. Boyles, Chief Justice of the Supreme Court of Michigan.

Dated: December 9, 1943.

[fols. 79-87] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—December 16, 1943

The petition of Kenneth M. Keefe and Wallace D. Bradford, appellants in the above entitled cause, for an appeal in said cause to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Michigan, together with the assignment of errors and the statement of jurisdiction, have been presented to the undersigned, and the records in this cause having been considered,

It Is Hereby Ordered that an appeal be, and it is hereby, allowed to the Supreme Court of the United States from the final judgment in said cause, dated the 11th day of October, 1943, of the Supreme Court of Michigan, as prayed in said petition, and the Clerk of the Supreme Court of Michigan shall within forty (40) days from this date make and transmit to the Supreme Court of the United States, under his hand and the seal of said court, a true copy of the material parts of the record herein, which shall be designated by praecipe or stipulation of the parties, or their counsel herein.

It Is Further Ordered that the said appellants shall give a good and sufficient bond in the sum of Five Hundred ($500.00) Dollars; that said appellants shall prosecute said appeal to effect and answer all costs if they fail to make their plea good.

Stanley Reed, Associate Justice of the Supreme Court of the United States.

Dated: December 16th, 1943.

[fol. 88] IN SUPREME COURT OF MICHIGAN

PLAINTIFF'S IN ERROR STATEMENT OF QUESTIONS INVOLVED

1. When lands in a drain district have passed through a scavenger sale under Act 155, Public Acts 1937, as amended, and are again privately owned, are they exempt from additional deficiency drain taxes provided under Act 129, Public Acts 1939?

The lower court said "Yes."
Appellants contend answer should be "No."

2. If Act 155, Public Acts 1937, as amended, can be construed as making such lands exempt from deficiency assessments, does it violate Article X, Section 9, of the State Constitution?

The lower court impliedly said "No."
Appellants contend answer should be "Yes."

3. If Act 155, Public Acts 1937, as amended, can be construed as making such lands exempt from deficiency assessments, does it violate Article I, Section 10, of the Federal Constitution, and Article II, Section 9, of the State Constitution?

The court impliedly said "No."
Appellants contend answer should be "Yes."

4. Do municipalities, against which an at large tax is spread, and lands which have not passed through a scavenger sale, become exempt from a deficiency levy under Act 129, Public Acts 1939?

The court said "Yes."
Appellants contend answer should be "No."

[fols. 89-90] IN SUPREME COURT OF MICHIGAN

DEFENDANT'S IN ERROR ARGUMENT

Appellees accept the issues as framed in the "Statement of Questions Involved" appearing on page i of Appellants' Brief. Appellees will answer these four questions in the order in which they appear on page i, although Appellants apparently combine the first three questions under the heading "I," pages 6 and 7, Appellants' Brief.

• • • • • • •

(Here follows 1 photolithograph, side folio 91-94)

[fol. 95] SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS AND DESIGNATION OF RECORD TO BE PRINTED—Filed February 2, 1944

Kenneth M. Keefe and Wallace D. Bradford, petitioners and appellants in the above entitled cause, pursuant to Paragraph 9 of Rule 13 of the Revised Rules of this Court, adopt their assignments of error as their statement of the points on which they intend to rely.

They designate the following parts of the record as necessary for the consideration of said points:

1. Printed record as filed in the Supreme Court of Michigan, except that the following should be omitted therefrom:

(a) Index.
(b) Title page.
(c) Names of attorneys and vertification on page 10.
(d) Portions of pages 16 and 17 between "Letter Of Transmittal" and "Submit In Duplicate With Bonds".
(e) Portions of pages 18 and 19, after first paragraph on page 18 and second paragraph on page 19.
(f) Inserted exhibits between pages 36 and 37.
(g) Portion of page 58 entitled "Certificate of the Court" and page 59.

[fol. 96] 2. Order of Chief Justice of Supreme Court of Michigan denying application for appeal to Supreme Court of United States, except title and certificate.

3. Petition for appeal from the Supreme Court of Michigan to the Supreme Court of the United States.

4. Assignments of error.

5. Judgment of Supreme Court of Michigan dated October 11, 1943, except caption and certificate.

6. Opinion of Supreme Court of Michigan.

7. Opinion of Circuit Court for County of Oakland.

Dated: January 27, 1944.

Paul W. Voorhies, Irvin Long, Counsel for Petitioners and Appellants. Business Address: 2046 Penobscot Building, Detroit, Michigan.

[fol. 97] SUPREME COURT OF THE UNITED STATES

[Title omitted]

COUNTER-DESIGNATION OF RECORD TO BE PRINTED—Filed March 1, 1944

Earl L. Clark, Drain Commissioner, Board of Supervisors of Oakland County and the City of Royal Oak, appellees and intervened appellees designate the following parts of the record in addition to those designated by appellants:

(1) That part of appellants brief in the Michigan Supreme Court entitled "Statement of Questions Involved";

(2) That part of appellees brief under the heading "Argument" page 3, which reads as follows: "Appellees accept the issues as framed in the "Statement of Questions Involved" appearing on page (I) of appellants brief;

(3) Defendants' Exhibit 2.

Harry J. Merritt, Attorney for Clark and Board of Supervisors. Business Address: County Office Building, Pontiac, Michigan. William C. Hudson, Attorney for City of Royal Oak, City Hall, Royal Oak, Michigan.

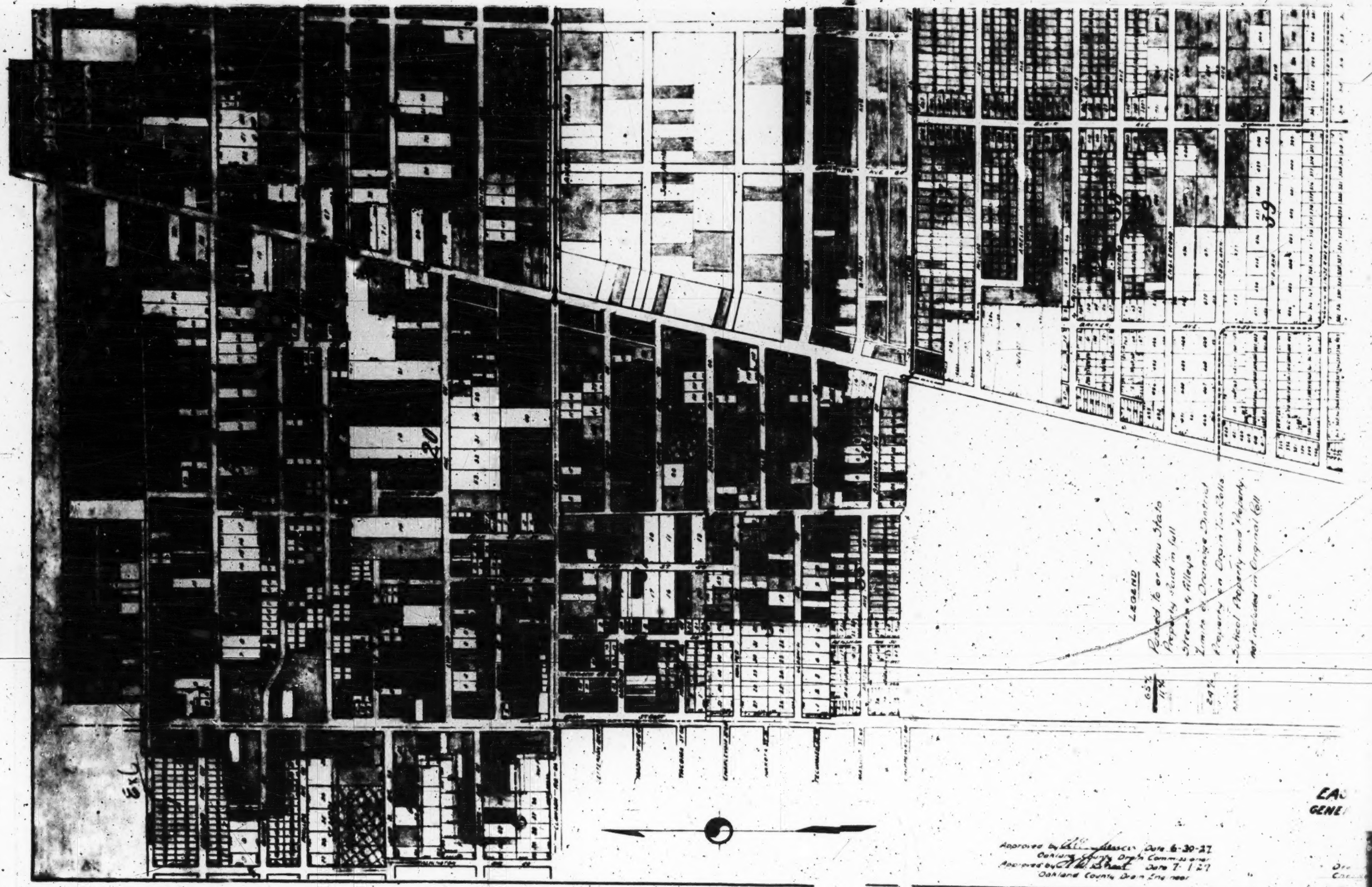
[fol. 98] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1943

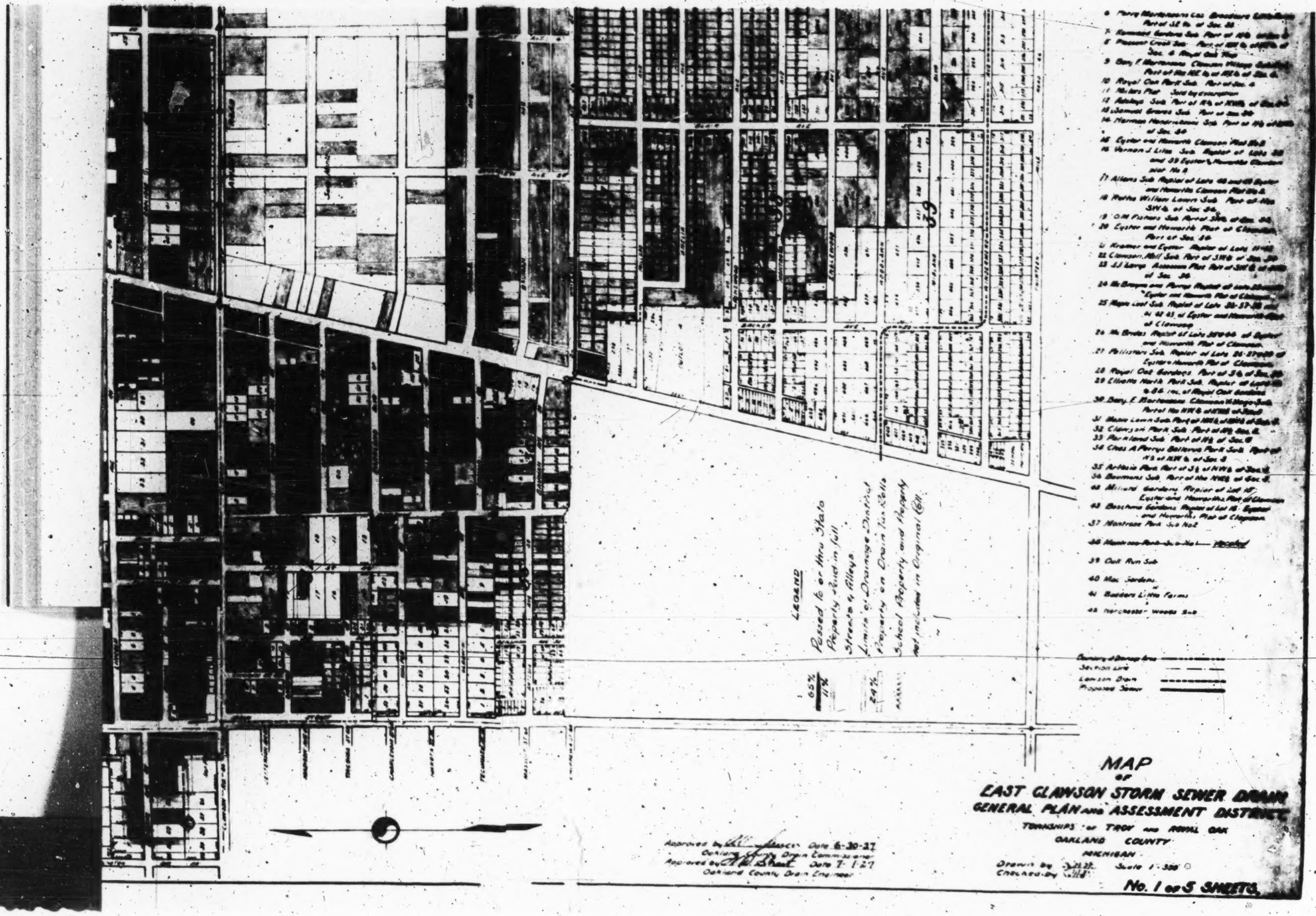
No. 634

ORDER NOTING PROBABLE JURISDICTION—February 28, 1944

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: File No. 48,127, Michigan Supreme Court, Term No. 634. Kenneth M. Keefe and Wallace D. Bradford, Appellants, vs. Earl L. Clark, Drain Commissioner of Oakland County, Michigan, and Board of Supervisors of Oakland County, City of Royal Oak, Intervenor. Filed January 26, 1944. Term No. 634, O. T. 1943.


LEGEND
Roads 16 or less Wide
Property Sold in Full
Streets & Alleys
Limits of Drainage District
Property in Drainage District
School Property and Property not included in Original Plat
Approved by [illegible] Date 6-30-27
Oakland County Drain Commissioner
Approved by C. E. Shaul Date 7-1-27
Oakland County Drain Engineer



6 Percy Montgomery Est. Broadmoor Estates Part of SE ¼ of Sec. 33
7 Normandy Gardens Sub. Part of NW ¼ of Sec. 4
8 Pleasant Creek Sub. Part of NW ¼ of NE ¼ of Sec. 4, Royal Oak Twp.
9 Percy F. Montgomery Clawson Village Subdivision Part of the NE ¼ & of NW ¼ of Sec. 4
10 Royal Oak Park Sub. Part of Sec. 4
11 Walters Plat. Sold by description
12 Ashley Sub. Part of E ½ of NW ¼ of Sec. 34
13 Samuel Graves Sub. Part of Sec. 28
14 Norman Hendrickson Sub. Part of W ½ of NW ¼ of Sec. 34
15 Oyster and Howarth Clawson Plat No. 2
16 Vernon J. Liles Sub. Replat of Lots 38 and 39 Oyster & Howarths Clawson plat No. 2
17 Allens Sub. Replat of Lots 40 and 41 Oyster and Howarths Clawson Plat No. 2.
18 Martha Wilson Lawns Sub. Part of the SW ¼ of Sec. 34.
19 O.M. Fishers Sub. Part of S½ of Sec. 34.
20 Oyster and Howarths Plat of Clawson, Part of Sec. 34
21 Kramer and Oyster. Replat of Lots 41-42
22 Clawson Mill Sub. Part of S½ of Sec. 34
23 J.J. Longs Assessors Plat. Part of S½ of NW ¼ of Sec. 36
24 Mr. Brooks and Percys Replat of Lots 38 Oyster and Howarths Plat of Clawson
25 Maple Leaf Sub. Replat of Lots 36-37-38 and N. 42 43 of Oyster and Howarths Plat of Clawson
26 Mr. Brooks Replat of Lots 39-40-41 of Oyster and Howarths Plat of Clawson.
27 Pollisters Sub. Replat of Lots 36-37-38-39 of Oyster Howarths Plat of Clawson.
28 Royal Oak Gardens. Part of S ½ of Sec. 33
29 Elliotts North Park Sub. Replat of Lots 4-5-6 inc. of Royal Oak Gardens
30 Percy F. Montgomery Clawson Village Sub. Part of the NW ¼ of NE ¼ of Sec. 4
31 Maple Lawn Sub. Part of NE ¼ of NW ¼ of Sec. 4
32 Clawson Park Sub. Part of NE ¼ Sec. 4
33 Park Land Sub. Part of N ½ of Sec. 3
34 Chas. A. Percys Baldwins Park Sub. Part of N ½ of NW ¼ of Sec. 3
35 Archdale Park. Part of S ½ of NW ¼ of Sec. 4
36 Baumans Sub. Part of the NW ¼ of Sec. 4
37 Mildred Gardens. Replat of Lot 47 Oyster and Howarths Plat of Clawson
38 Beechtree Gardens. Replat of Lot 48 Oyster and Howarths Plat of Clawson
39 Montrose Park Sub No. 2
40 Montrose Park Sub No. 1 Vacated
41 Oak Run Sub
42 Mac Gardens
43 Baldwins Little Farms
44 Norchester Woods Sub

MAP
OF
EAST CLAWSON STORM SEWER DRAIN
GENERAL PLAN and ASSESSMENT DISTRICT
TOWNSHIPS of TROY and ROYAL OAK
OAKLAND COUNTY
MICHIGAN

Drawn by [illegible] Scale 1" = 300'
Checked by [illegible]

No. 1 of 5 SHEETS